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POWER POINT PRESENTATION

The following power point presentations were made at the Colloquium. Because of their nature they are not reproduced here, but can be retrieved at <http://www.cmi2010buenosaires.com.ar/en/colloquium-documentation>:

Rotterdam Rules General Presentation, by Kate Lannan

Obligaciones y responsabilidad del porteador, by Manuel Alba Fernandez

Paraguay-Paraná Hidrovía. Pollution prevention and control. Institutional and environmental conditions, by Aldo Brandani

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PART I

**Organization of
the CMI**

Comité Maritime International

CONSTITUTION

2001¹

PART I - GENERAL

Article 1

Name and Object

The name of this organization is “Comité Maritime International.” It is a non-governmental not-for-profit international organization established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects.

To this end it shall promote the establishment of national associations of maritime law and shall co-operate with other international organizations.

Article 2

Existence and Domicile

The juridical personality of the Comité Maritime International is established under the law of Belgium of 25th October 1919, as later amended. The Comité Maritime International is domiciled in the City of Antwerp, and its registered office is at Everdijstraat 43 B-2000 Antwerp. Its

¹ While meeting at Toledo, the Executive Council created on 17 October 2000 a committee in charge of drafting amendments to the Constitution, in order to comply with Belgian law so as to obtain juridical personality. This committee, chaired by Frank Wiswall and with the late Allan Philip, Alexander von Ziegler and Benoît Goemans as members, prepared the amendments which were sent to the National Member Associations on 15 December 2000. At Singapore the Assembly, after the adoption of two further amendments as per the suggestion of Patrice Rembauville-Nicolle speaking for the French delegation, unanimously approved the new Constitution. The Singapore Assembly also empowered the Executive Council to adopt any amendments to the approved text of the Constitution if required by the Belgian government. Exercising this authority, minor amendments were indeed adopted by the Executive Council, having no effect on the way in which the Comité Maritime International functions or is organised. As an example, Article 3.I.a has been slightly amended. Also Article 3.II has been expanded to embody in the Constitution itself the procedure governing the expulsion of Members rather than in rules adopted by the Assembly. By Decree of 9 November 2003 the King of Belgium granted juridical personality to the Comité Maritime International. By virtue of Article 50 of the Belgian Act of 27 June 1921, as incorporated by Article 41 of the Belgian Act of 2 May 2002, juridical personality was acquired at the date of the Decree, *i.e.*, 9 November 2003, which is also the date of entry into force of the present Constitution. Since 9 November 2003, the Comité Maritime International has existed as an International Not-for-Profit Association (*AISBL*) within the meaning of the Belgian Act of 27 June 1921.

Comité Maritime International

STATUTS

2001¹

Ière PARTIE - DISPOSITIONS GENERALES

Article 1er

Nom et objet

Le nom de l'organisation, objet des présents statuts, est "Comité Maritime International". Le Comité Maritime International est une organisation non-gouvernementale internationale sans but lucratif, fondée à Anvers en 1897, et dont l'objet est de contribuer, par tous travaux et moyens appropriés, à l'unification du droit maritime sous tous ses aspects.

Il favorisera à cet effet la création d'associations nationales de droit maritime. Il collaborera avec d'autres organisations internationales.

Article 2

Existence et siège

Le Comité Maritime International a la personnalité morale selon la loi belge du 25 octobre 1919 telle que modifiée ultérieurement. Le Comité Maritime International a son siège 43 Everdijstraat à B-2000 Anvers. Le

¹ Réuni à Tolède, le Conseil exécutif a constitué, le 17 octobre 2000, une commission chargée de la réforme des statuts, nécessaire pour obtenir la personnalité morale en Belgique. Cette commission, présidée par Frank Wiswall et composée en outre de feu Allan Philip, d'Alexander von Ziegler et de Benoît Goemans, a préparé les modifications et les a adressées aux Associations nationales le 15 décembre 2000. A Singapour, l'Assemblée générale a, à l'unanimité, approuvé le 16 février 2001, le projet de modification préparé par la commission sus-dite, après avoir apporté deux modifications sur proposition de Patrice Rembauville-Nicolle, de la délégation française. L'Assemblée générale a également accordé au Conseil exécutif le pouvoir d'apporter des modifications qu'imposerait le gouvernement belge en vue de l'obtention de la personnalité morale. En application de cette résolution, les statuts ont subis quelques petites modifications, sans effet sur le fonctionnement ni l'organisation du CMI. Ainsi par exemple, l'article 3 I a) a été légèrement modifié et, les règles régissant la procédure d'exclusion de membres, jusqu'alors un texte séparé, ont été incorporées dans les statuts (article 3.II). Par Arrêté du 9 novembre 2003 le Roi des belges a accordé au Comité Maritime International la personnalité morale. En application de l'article 50 de la Loi belge du 27 juin 1921, tel qu'inséré par l'article 41 de la Loi belge du 2 mai 2002, la personnalité morale fût acquise à la date de l'Arrêté, soit, le 9 novembre 2003, également la date d'entrée en vigueur des présents statuts. Le Comité Maritime International est depuis le 9 novembre 2003 une Association Internationale Sans But Lucratif au sens de la Loi belge du 27 juin 1921.

address may be changed by decision of the Executive Council, and such change shall be published in the *Annexes du Moniteur belge*.

Article 3 Membership and Liability

I

- a) The voting Members of the Comité Maritime International are national (or multinational) Associations of Maritime Law elected to membership by the Assembly, the object of which Associations must conform to that of the Comité Maritime International and the membership of which must be fully open to persons (individuals or bodies having juridical personality in accordance with their national law and custom) who either are involved in maritime activities or are specialists in maritime law. Member Associations must be democratically constituted and governed, and must endeavour to present a balanced view of the interests represented in their Association.

Where in a State there is no national Association of Maritime Law in existence, and an organization in that State applies for membership of the Comité Maritime International, the Assembly may accept such organization as a Member of the Comité Maritime International if it is satisfied that the object of such organization, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in this Constitution to Member Associations, it will be deemed to include any organization admitted as a Member pursuant to this Article.

Only one organization in each State shall be eligible for membership, unless the Assembly otherwise decides. A multinational Association is eligible for membership only if there is no Member Association in any of its constituent States.

The national (or multinational) Member Associations of the Comité Maritime International are identified in a list to be published annually.

- b) Where a national (or multinational) Member Association does not possess juridical personality according to the law of the country where it is established, the members of such Member Association who are individuals or bodies having juridical personality in accordance with their national law and custom, acting together in accordance with their national law, shall be deemed to constitute that Member Association for purposes of its membership of the Comité Maritime International.
- c) Individual members of Member Associations may be elected by the Assembly as Titulary Members of the Comité Maritime International upon the proposal of the Association concerned, endorsed by the Executive Council. Individual persons may also be elected by the Assembly as Titulary Members upon the proposal of the Executive Council. Titulary Membership is of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the Comité Maritime International and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of

Constitution

siège peut être transféré dans tout autre lieu en Belgique par simple décision du Conseil exécutif publiée aux *Annexes du Moniteur belge*.

Article 3**Membres et responsabilité****I**

- a) Les Membres avec droit de vote du Comité Maritime International sont les Associations nationales (ou multinationales) de droit maritime, élues Membres par l'Assemblée, dont les objectifs sont conformes à ceux du Comité Maritime International et dont la qualité de Membre doit être accessible à toutes personnes (personnes physiques ou personnes morales légalement constituées selon les lois et usages de leur pays d'origine) qui, ou bien participent aux activités maritimes, ou bien sont des spécialistes du droit maritime. Chaque Association membre doit être constituée et gérée de façon démocratique et doit maintenir l'équilibre entre les divers intérêts dans son sein.

Si dans un pays il n'existe pas d'Association nationale et qu'une organisation de ce pays pose sa candidature pour devenir Membre du Comité Maritime International, l'Assemblée peut accepter une pareille organisation comme Membre du Comité Maritime International après s'être assurée que l'objectif, ou un des objectifs, poursuivis par cette organisation est l'unification du droit maritime sous tous ses aspects.

Toute référence dans les présents statuts à des Associations membres comprendra toute organisation qui aura été admise comme Membre conformément au présent article.

Une seule organisation par pays est éligible en qualité de Membre du Comité Maritime International, à moins que l'Assemblée n'en décide autrement. Une association multinationale n'est éligible en qualité de Membre que si aucun des Etats qui la composent ne possède d'Association membre. Une liste à publier annuellement énumérera les Associations nationales (ou multinationales) membres du Comité Maritime International.

- b) Lorsqu'une Association nationale (ou multinationale) Membre du Comité Maritime International n'a pas la personnalité morale selon le droit du pays où cette association est établie les membres (qui sont des personnes physiques ou des personnes morales légalement constituées selon les lois et usages de leur pays d'origine) de cette Association, agissent ensemble selon leur droit national et seront sensés constituer l'Association membre en ce qui concerne l'affiliation de celle-ci au Comité Maritime International.
- c) Des membres individuels d'Associations Membres peuvent être élus Membres titulaires du Comité Maritime International par l'Assemblée sur proposition émanant de l'Association intéressée et ayant recueilli l'approbation du Conseil exécutif. Des personnes peuvent aussi, à titre individuel, être élues par l'Assemblée comme Membres titulaires sur proposition du Conseil exécutif. L'affiliation comme Membre titulaire aura un caractère honorifique et sera décidée en tenant compte des contributions apportées par les candidats à l'oeuvre du Comité Maritime

Part I - Organization of the CMI

maritime law or related commercial practice. The Titulary Members of the Comité Maritime International are identified in a list to be published annually.

Titulary Members presently or formerly belonging to an association which is no longer a member of the Comité Maritime International may remain individual Titulary Members at large, pending the formation of a new Member Association in their State.

- d) Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the Comité Maritime International may upon the proposal of the Executive Council be elected as Provisional Members. A primary objective of Provisional Membership is to facilitate the organization and establishment of new Member national or regional Associations of Maritime Law. Provisional Membership is not normally intended to be permanent, and the status of each Provisional Member will be reviewed at three-year intervals. However, individuals who have been Provisional Members for not less than five years may upon the proposal of the Executive Council be elected by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State. The Provisional Members of the Comité Maritime International are identified in a list to be published annually.
- e) The Assembly may elect to Membership *honoris causa* any individual person who has rendered exceptional service to the Comité Maritime International or in the attainment of its object, with all of the rights and privileges of a Titulary Member but without payment of subscriptions. Members *honoris causa* may be designated as honorary officers of the Comité Maritime International if so proposed by the Executive Council. Members *honoris causa* shall not be attributed to any Member Association or State, but shall be individual members of the Comité Maritime International as a whole. The Members *honoris causa* of the Comité Maritime International are identified in a list to be published annually.
- f) International organizations which are interested in the object of the Comité Maritime International may be elected as Consultative Members. The Consultative Members of the Comité Maritime International are identified in a list to be published annually.

II

- a) Members may be expelled from the Comité Maritime International by reason:
 - (i) of default in payment of subscriptions;
 - (ii) of conduct obstructive to the object of the Comité as expressed in the Constitution; or
 - (iii) of conduct likely to bring the Comité or its work into disrepute.
- b) (i) A motion to expel a Member may be made:
 - (A) by any Member Association or Titulary Member of the Comité;

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International, et/ou des services qu'ils auront rendus dans le domaine du droit ou des affaires maritimes ou des pratiques commerciales qui y sont liées. Une liste à publier annuellement énumèrera les Membres titulaires du Comité Maritime International. Les Membres titulaires appartenant ou ayant appartenu à une Association qui n'est plus Membre du Comité Maritime International peuvent rester Membres titulaires individuels hors cadre, en attendant la constitution d'une nouvelle Association membre dans leur Etat.

- d) Les nationaux des pays où il n'existe pas d'Association membre mais qui ont fait preuve d'intérêt pour les objectifs du Comité Maritime International peuvent, sur proposition du Conseil exécutif, être élus comme Membres Provisoires. L'un des objectifs essentiels du statut de Membre Provisoire est de favoriser la mise en place et l'organisation, au plan national ou régional, de nouvelles Associations de Droit Maritime affiliées au Comité Maritime International. Le statut de Membre Provisoire n'est pas normalement destiné à être permanent, et la situation de chaque Membre Provisoire sera examinée tous les trois ans. Cependant, les personnes physiques qui sont Membres Provisoires depuis cinq ans au moins peuvent, sur proposition du Conseil exécutif, être élues Membres titulaires par l'Assemblée, à concurrence d'un maximum de trois par pays. Une liste à publier annuellement énumèrera les Membres Provisoires du Comité Maritime International.
- e) L'Assemblée peut élire Membre honoraire, jouissant des droits et privilèges d'un Membre titulaire mais dispensé du paiement des cotisations, toute personne physique ayant rendu des services exceptionnels au Comité Maritime International. Des membres honoraires peuvent, sur proposition du Conseil exécutif, être désignés comme Membres honoraires du Bureau, y compris comme Président honoraire ou Vice-Président honoraire, si ainsi proposé par le Conseil exécutif. Les membres honoraires ne relèvent d'aucune Association membre ni d'aucun Etat, mais sont à titre personnel membres du Comité Maritime International pour l'ensemble de ses activités. Une liste à publier annuellement énumèrera les membres honoraires du Comité Maritime International.
- f) Les organisations internationales qui s'intéressent aux objectifs du Comité Maritime International peuvent être élues membres consultatifs. Une liste à publier annuellement énumèrera les membres consultatifs du Comité Maritime International.

II

- a) Des membres peuvent être exclus du Comité Maritime International en raison
- (i) de leur carence dans le paiement de leur contribution;
 - (ii) de leur conduite faisant obstacle à l'objet du Comité tel qu'énoncé aux statuts;
 - (iii) de leur conduite susceptible de discréditer le Comité ou son oeuvre.
- b) (i) Une requête d'exclusion d'un Membre sera faite:
- (A) par toute Association Membre ou par un Membre titulaire;

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- or
- (B) by the Executive Council.
- (ii) Such motion shall be made in writing and shall set forth the reason(s) for the motion.
 - (iii) Such motion must be filed with the Secretary-General or Administrator, and shall be copied to the Member in question.
- c) A motion to expel made under sub-paragraph II(b)(i)(A) of this Article shall be forwarded to the Executive Council for first consideration.
- (i) If such motion is approved by the Executive Council, it shall be forwarded to the Assembly for consideration pursuant to Article 7(b).
 - (ii) If such motion is not approved by the Executive Council, the motion may nevertheless be laid before the Assembly at its meeting next following the meeting of the Executive Council at which the motion was considered.
- d) A motion to expel shall not be debated in or acted upon by the Assembly until at least ninety (90) days have elapsed since the original motion was copied to the Member in question. If less than ninety (90) days have elapsed, consideration of the motion shall be deferred to the next succeeding Assembly.
- e) (i) The Member in question may offer a written response to the motion to expel, and/or may address the Assembly for a reasonable period in debate upon the motion.
- (ii) In the case of a motion to expel which is based upon default in payment under paragraph II(a)(i) of this Article, actual payment in full of all arrears currently owed by the Member in question shall constitute a complete defence to the motion, and upon acknowledgment of payment by the Treasurer the motion shall be deemed withdrawn.
- f) (i) In the case of a motion to expel which is based upon default in payment under paragraph II(a) of this Article, expulsion shall require the affirmative vote of a simple majority of the Member Associations present, entitled to vote, and voting.
- (ii) In the case of a motion to expel which is based upon paragraph II(a)(ii) and (iii) of this Article, expulsion shall require the affirmative vote of a two-thirds majority of the Member Associations present, entitled to vote, and voting.
- g) Amendments to these provisions may be adopted in compliance with Article 6. Proposals of amendments shall be made in writing and shall be transmitted to all National Associations at least sixty (60) days prior to the annual meeting of the Assembly at which the proposed amendments will be considered.

III

The liability of Members for obligations of the Comité Maritime International shall be limited to the amounts of their subscriptions paid or currently due and payable to the Comité Maritime International.

Constitution

- (B) par le Conseil exécutif.
- (ii) Une requête d'exclusion d'un Membre se fera par écrit et en exposera les motifs.
 - (iii) La requête d'exclusion doit être déposée chez le Secrétaire général ou chez l'Administrateur et sera transmise en copie au Membre en question.
- c) Une requête d'exclusion faite en vertu de l'alinéa II (b) (i) (A) ci-dessus sera transmise pour examen au Conseil exécutif pour la prendre en considération.
- (i) Si telle requête est approuvée par le Conseil exécutif, elle sera transmise à l'Assemblée pour délibération telle que prévue à l'article 7 b) des statuts.
 - (ii) Si la requête n'est pas approuvée par le Conseil exécutif, elle peut néanmoins être soumise à la réunion de l'Assemblée suivant immédiatement la réunion du Conseil exécutif où la requête a été examinée.
- d) Une demande d'exclusion ne fera pas l'objet de délibération ou ne il n'en sera pas pris acte par l'Assemblée si au moins quatre-vingt-dix jours ne se sont pas écoulés depuis la communication de la copie de la requête d'exclusion au Membre visé. Si moins de quatre-vingt-dix jours se sont écoulés, la requête sera prise en considération à la prochaine réunion de l'Assemblée.
- e) (i) Le Membre en question peut présenter une réplique écrite à la requête d'exclusion, et/ou peut prendre la parole à l'Assemblée pendant la délibération sur la requête.
- (ii) Dans le cas d'une requête d'exclusion appuyée sur une carence de paiement, comme le prévoit l'article 3 II a) (i) ci-dessus, le paiement effectif de tous les arriérés dus par le Membre visé, constituera une défense suffisante et, pourvu que le Trésorier confirme le paiement, la requête sera présumée être retirée.
- f) (i) Dans le cas d'une requête d'exclusion appuyée sur une carence de paiement prévue à l'alinéa II(a) ci-dessus, le Membre sera exclu à la majorité simple des suffrages exprimés par les Membres en droit de voter.
- (ii) En cas de requête d'exclusion appuyée sur un motif prévu au II a) (ii) et (iii) ci-dessus, le Membre sera exclu par un vote des deux tiers des suffrages exprimés par les Membres en droit de voter.
- g) Des modifications aux présentes dispositions peuvent être adoptées conformément à l'article 6 des statuts. Les propositions de modifications se feront par écrit et seront transmises à toutes les Associations Membres au plus tard soixante jours avant la réunion annuelle de l'Assemblée à laquelle les modifications proposées seront prises en considération.

III.

La responsabilité des Membres au titre des obligations du Comité Maritime International sera limitée au montant de leurs cotisations payées ou dues et exigibles par le Comité Maritime International.

PART II - ASSEMBLY

Article 4 Composition

The Assembly shall consist of all Members of the Comité Maritime International and the members of the Executive Council.

Each Member Association and each Consultative Member may be represented in the Assembly by not more than three delegates.

As approved by the Executive Council, the President may invite Observers to attend all or parts of the meetings of the Assembly.

Article 5 Meetings and Quorum

The Assembly shall meet annually on a date and at a place decided by the Executive Council. The Assembly shall also meet at any other time, for a specified purpose, if requested by the President, by ten of its Member Associations or by the Vice-Presidents. At least six weeks notice shall be given of such meetings.

At any meeting of the Assembly, the presence of not less than five Member Associations entitled to vote shall constitute a lawful quorum.

Article 6 Agenda and Voting

Matters to be dealt with by the Assembly, including election to vacant offices, shall be set out in the agenda accompanying the notice of the meeting. Decisions may be taken on matters not set out in the agenda, other than amendments to this Constitution, provided no Member Association represented in the Assembly objects to such procedure.

Members *honoris causa* and Titulary, Provisional and Consultative Members shall enjoy the rights of presence and voice, but only Member Associations in good standing shall have the right to vote.

Each Member Association present in the Assembly and entitled to vote shall have one vote. The right to vote cannot be delegated or exercised by proxy. The vote of a Member Association shall be cast by its president, or by another of its members duly authorized by that Association.

All decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to this Constitution or to any Rules adopted pursuant to Article 7(h) and (i) shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting. The Administrator, or another person designated by the President, shall submit to the Belgian Ministry of Justice any amendments of this Constitution and shall secure their publication in the *Annexes du Moniteur belge*.

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2ème PARTIE - ASSEMBLEE**Article 4****Composition**

L'Assemblée est composée de tous les membres du Comité Maritime International et des membres du Conseil exécutif.

Toute Association membre et tout Membre consultatif peuvent être représentés à l'Assemblée par trois délégués au maximum.

Le Président peut, avec l'approbation du Conseil exécutif, inviter des observateurs à assister, totalement ou partiellement, aux réunions de l'Assemblée.

Article 5**Réunions et quorum**

L'Assemblée se réunit chaque année à la date et au lieu fixés par le Conseil exécutif. L'Assemblée se réunit en outre à tout autre moment, avec un ordre du jour déterminé, à la demande du Président, de dix de ses Associations Membres, ou des Vice-Présidents. Le délai de convocation est de six semaines au moins.

A chaque réunion de l'Assemblée, la présence d'au moins cinq Associations membres avec droit de vote constituera un quorum de présence suffisant.

Article 6**Ordre du jour et votes**

Les questions dont l'Assemblée devra traiter, y compris les élections à des charges vacantes, seront exposées dans l'ordre du jour accompagnant la convocation aux réunions. Des décisions peuvent être prises sur des questions non inscrites à l'ordre du jour, exception faite de modifications aux présents statuts, pourvu qu'aucune Association membre représentée à l'Assemblée ne s'oppose à cette façon de faire.

Chaque Association membre présente à l'Assemblée et jouissant du droit de vote dispose d'une voix. Le droit de vote ne peut pas être délégué ni exercé par procuration. La voix d'une Association membre sera émise par son Président, ou, par un autre membre mandaté à cet effet et ainsi certifié par écrit à l'Administrateur.

Toutes les décisions de l'Assemblée sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote. Toutefois, le vote positif d'une majorité des deux tiers de toutes les Associations membres présentes, jouissant du droit de vote et prenant part au vote sera nécessaire pour modifier les présents statuts ou des règles adoptées en application de l'Article 7 (h) et (i). L'Administrateur, ou une personne désignée par le Président, soumettra au Ministère de la Justice belge toute modification des statuts et veillera à sa publication aux *Annexes du Moniteur belge*.

Article 7

Functions

The functions of the Assembly are:

- a) To elect the Officers of the Comité Maritime International;
- b) To elect Members of and to suspend or expel Members from the Comité Maritime International;
- c) To fix the amounts of subscriptions payable by Members to the Comité Maritime International;
- d) To elect auditors;
- e) To consider and, if thought fit, approve the accounts and the budget;
- f) To consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International;
- g) To approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, International Conferences;
- h) To adopt rules governing the expulsion of Members;
- i) To adopt rules of procedure not inconsistent with the provisions of this Constitution; and
- j) To amend this Constitution.

PART III - OFFICERS

Article 8

Designation

The Officers of the Comité Maritime International shall be:

- a) The President,
- b) The Vice-Presidents,
- c) The Secretary-General,
- d) The Treasurer,
- e) The Administrator (if an individual),
- f) The Executive Councillors, and
- g) The Immediate Past President.

Article 9

President

The President of the Comité Maritime International shall preside over the Assembly, the Executive Council, and the International Conferences convened by the Comité Maritime International. He shall be an ex-officio member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

With the assistance of the Secretary-General and the Administrator he shall carry out the decisions of the Assembly and of the Executive Council, supervise the work of the International Sub-Committees and Working Groups, and represent the Comité Maritime International externally.

The President shall have authority to conclude and execute agreements on behalf of the Comité Maritime International, and to delegate this authority to other officers of the Comité Maritime International.

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Article 7**Fonctions**

Les fonctions de l'Assemblée consistent à:

- a) élire les Membres du Bureau du Comité Maritime International;
- b) élire des Membres du Comité Maritime International et en suspendre ou exclure;
- c) fixer les montants des cotisations dues par les Membres au Comité Maritime International;
- d) élire des réviseurs de comptes;
- e) examiner et, le cas échéant, approuver les comptes et le budget;
- f) étudier les rapports du Conseil exécutif et prendre des décisions concernant les activités futures du Comité Maritime International;
- g) approuver la convocation et fixer l'ordre du jour de Conférences Internationales du Comité Maritime International, et approuver en dernière lecture les résolutions adoptées par elles;
- h) adopter des règles régissant l'exclusion de Membres;
- i) adopter des règles de procédure sous réserve qu'elles soient conformes aux présents statuts;
- j) modifier les présents statuts.

3ème PARTIE- MEMBRES DU BUREAU**Article 8****Désignation**

Les Membres du Bureau du Comité Maritime International sont:

- a) le Président,
- b) les Vice-Présidents,
- c) le Secrétaire général,
- d) le Trésorier,
- e) l'Administrateur (s'il est une personne physique),
- f) les Conseillers exécutifs, et
- g) le Président précédant.

Article 9**Le Président**

Le Président du Comité Maritime International préside l'Assemblée, le Conseil exécutif et les Conférences Internationales convoquées par le Comité Maritime International. Il est Membre de droit de tout comité, de toute commission internationale ou de tout groupe de travail désignés par le Conseil exécutif.

Avec le concours du Secrétaire général et de l'Administrateur il met à exécution les décisions de l'Assemblée et du Conseil exécutif, surveille les travaux des commissions internationales et des groupes de travail, et représente, à l'extérieur, le Comité Maritime International.

Le Président aura le pouvoir de conclure des contrats et de les exécuter au nom et pour le compte du Comité Maritime International, et de donner tel pouvoir à d'autres Membres du Bureau du Comité Maritime International.

Part I - Organization of the CMI

The President shall have authority to institute legal action in the name and on behalf of the Comité Maritime International, and to delegate such authority to other officers of the Comité Maritime International. In case of the impeachment of the President or other circumstances in which the President is prevented from acting and urgent measures are required, five officers together may decide to institute such legal action provided notice is given to the other members of the Executive Council. The five officers taking such decision shall not take any further measures by themselves unless required by the urgency of the situation.

In general, the duty of the President shall be to ensure the continuity and the development of the work of the Comité Maritime International.

The President shall be elected for a term of four years and shall be eligible for re-election for one additional term.

Article 10

Vice-Presidents

There shall be two Vice-Presidents of the Comité Maritime International, whose principal duty shall be to advise the President and the Executive Council, and whose other duties shall be assigned by the Executive Council.

The Vice-Presidents, in order of their seniority as officers of the Comité Maritime International, shall substitute for the President when the President is absent or is unable to act.

Each Vice-President shall be elected for a term of four years, and shall be eligible for re-election for one additional term.

Article 11

Secretary-General

The Secretary-General shall have particular responsibility for organization of the non-administrative preparations for International Conferences, Seminars and Colloquia convened by the Comité Maritime International, and to maintain liaison with other international organizations. He shall have such other duties as may be assigned by the Executive Council or the President.

The Secretary-General shall be elected for a term of four years, and shall be eligible for re-election without limitation upon the number of terms.

Article 12

Treasurer

The Treasurer shall be responsible for the funds of the Comité Maritime International, and shall collect and disburse, or authorise disbursement of, funds as directed by the Executive Council.

The Treasurer shall maintain adequate accounting records. The Treasurer shall also prepare financial statements for the preceding calendar year in accordance with current International Accounting Standards, and shall prepare proposed budgets for the current and next succeeding calendar years.

The Treasurer shall submit the financial statements and the proposed

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Le Président a le pouvoir d'agir en justice au nom et pour le compte de Comité Maritime International. Il peut donner tel pouvoir à d'autres Membres du Bureau du Comité Maritime International. En cas d'empêchement du Président, ou si pour quelque motif que ce soit celui-ci est dans l'impossibilité d'agir et que des mesures urgentes s'imposent, cinq Membres du Bureau, agissant ensemble, peuvent décider d'agir en justice, pourvu qu'ils en avisent les autres Membres du Bureau. Ceux-ci ne prendront d'autres mesures que celles dictées par l'urgence.

D'une manière générale, la mission du Président consiste à assurer la continuité et le développement de l'oeuvre du Comité Maritime International.

Le Président est élu pour un mandat de quatre ans et il est rééligible une fois.

Article 10**Les Vice-Présidents**

Le Comité Maritime International comprend deux Vice-Présidents, dont la mission principale est de conseiller le Président et le Conseil exécutif, et qui peuvent se voir confier d'autres missions par le Conseil exécutif.

Le Vice-Président le plus ancien comme Membre du Bureau du Comité Maritime International supplée le Président quand celui-ci est absent ou dans l'impossibilité d'exercer sa fonction.

Chacun des Vice-Présidents est élu pour un mandat de quatre ans, renouvelable une fois.

Article 11**Le Secrétaire général**

Le Secrétaire général a tout spécialement la responsabilité d'organiser les préparatifs, autres qu'administratifs, des Conférences Internationales, séminaires et colloques convoqués par le Comité Maritime International, et d'entretenir des rapports avec d'autres organisations internationales. D'autres missions peuvent lui être confiées par le Conseil exécutif et le Président.

Le Secrétaire Général est élu pour un mandat de quatre ans, renouvelable sans limitation de durée. Le nombre de mandats successifs du Secrétaire Général est illimité.

Article 12**Le Trésorier**

Le Trésorier répond des fonds du Comité Maritime International, il encaisse les fonds et en effectue ou en autorise le déboursement conformément aux instructions du Conseil exécutif.

Le Trésorier tient les livres comptables. Il prépare les bilans financiers de l'année civile précédente conformément aux normes comptables internationales, et prépare les budgets proposés pour l'année civile en cours et la suivante.

Le Trésorier soumet les bilans financiers et les budgets proposés pour révision par les réviseurs et le Comité de révision, désigné par le Conseil

budgets for review by the auditors and the Audit Committee appointed by the Executive Council, and following any revisions shall present them for review by the Executive Council and approval by the Assembly not later than the first meeting of the Executive Council in the calendar year next following the year to which the financial statements relate.

The Treasurer shall be elected for a term of four years, and shall be eligible for re-election without limitation upon the number of terms.

Article 13

Administrator

The functions of the Administrator are:

- a) To give official notice of all meetings of the Assembly and the Executive Council, of International Conferences, Seminars and Colloquia, and of all meetings of Committees, International Sub-Committees and Working Groups;
- b) To circulate the agendas, minutes and reports of such meetings;
- c) To make all necessary administrative arrangements for such meetings;
- d) To take such actions, either directly or by appropriate delegation, as are necessary to give effect to administrative decisions of the Assembly, the Executive Council, and the President;
- e) To circulate such reports and/or documents as may be requested by the President, the Secretary-General or the Treasurer, or as may be approved by the Executive Council;
- f) To keep current and to ensure annual publication of the lists of Members pursuant to Article 3; and
- g) In general to carry out the day by day business of the secretariat of the Comité Maritime International.

The Administrator may be an individual or a body having juridical personality. If a body having juridical personality, the Administrator shall be represented on the Executive Council by one natural individual person. If an individual, the Administrator may also serve, if elected to that office, as Treasurer of the Comité Maritime International.

The Administrator, if an individual, shall be elected for a term of four years, and shall be eligible for re-election without limitation upon the number of terms. If a body having juridical personality, the Administrator shall be appointed by the Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

Article 14

Executive Councillors

There shall be eight Executive Councillors of the Comité Maritime International, who shall have the functions described in Article 18.

The Executive Councillors shall be elected upon individual merit, also giving due regard to balanced representation of the legal systems and geographical areas of the world characterised by the Member Associations.

Each Executive Councillor shall be elected for a term of four years, and shall be eligible for re-election for one additional term.

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exécutif; il les présente après correction au Conseil exécutif pour révision et à l'Assemblée pour approbation au plus tard à la première réunion du Conseil exécutif pendant l'année civile suivant l'année comptable en question.

Le Trésorier est élu pour un mandat de quatre ans. Son mandat est renouvelable. Le nombre de mandats successifs du Trésorier est illimité.

Article 13 **L'Administrateur**

Les fonctions de l'Administrateur consistent à:

- a) envoyer les convocations à toutes réunions de l'Assemblée et du Conseil exécutif, des conférences internationales, séminaires et colloques, ainsi qu'à toutes réunions de comités, de commissions internationales et de groupes de travail,
- b) distribuer les ordres du jour, procès-verbaux et rapports de ces réunions,
- c) prendre toutes les dispositions administratives utiles en vue de ces réunions,
- d) entreprendre toute action, de sa propre initiative ou par délégation, nécessaire pour donner plein effet aux décisions de nature administrative prises par l'Assemblée, le Conseil exécutif, et le Président,
- e) assurer la distribution de rapports et documents demandées par le Président, le Secrétaire Général ou le Trésorier, ou approuvées par le Conseil exécutif,
- f) maintenir à jour et assurer la publication annuelle des listes de Membres en application de l'article 3;
- g) d'une manière générale accomplir la charge quotidienne du secrétariat du Comité Maritime International.

L'Administrateur peut être une personne physique ou une personne morale. Si l'Administrateur est une personne morale, elle sera représentée par une personne physique pour pouvoir siéger au Conseil exécutif. L'Administrateur personne physique peut également exercer la fonction de Trésorier du Comité Maritime International, s'il est élu à cette fonction.

L'Administrateur personne physique est élu pour un mandat de quatre ans. Son mandat est renouvelable. Le nombre de mandats successifs de l'Administrateur est illimité. L'Administrateur personne morale est élu par l'Assemblée sur proposition du Conseil exécutif et reste en fonction jusqu'à l'élection d'un successeur.

Article 14 **Les Conseillers exécutifs**

Le Comité Maritime International compte huit Conseillers exécutifs, dont les fonctions sont décrites à l'article 18.

Les Conseillers exécutifs sont élus en fonction de leur mérite personnel, eu égard également à une représentation équilibrée des systèmes juridiques et des régions du monde auxquels les Association Membres appartiennent.

Chaque Conseiller exécutif est élu pour un mandat de quatre ans, renouvelable une fois.

Article 15

Nominations

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the Comité Maritime International.

The Nominating Committee shall consist of:

- a) A chairman, who shall have a casting vote where the votes are otherwise equally divided, and who shall be elected by the Executive Council,
- b) The President and past Presidents,
- c) One member elected by the Vice-Presidents, and
- d) One member elected by the Executive Councillors.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he is a candidate.

On behalf of the Nominating Committee, the chairman shall first determine whether any officers eligible for re-election are available to serve for an additional term. He shall then solicit the views of the Member Associations concerning candidates for nomination. The Nominating Committee shall then make nominations, taking such views into account.

Following the decisions of the Nominating Committee, the chairman shall forward its nominations to the Administrator in ample time for distribution not less than ninety days before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations for election to any office independently of the Nominating Committee, provided such nominations are forwarded to the Administrator in writing not less than three working days before the annual meeting of the Assembly at which nominees are to be elected.

The Executive Council may make nominations for election to the offices of Secretary-General, Treasurer and/or Administrator. Such nominations shall be forwarded to the chairman of the Nominating Committee at least one-hundred twenty days before the annual meeting of the Assembly at which nominees are to be elected.

Article 16

Immediate Past President

The Immediate Past President of the Comité Maritime International shall have the option to attend all meetings of the Executive Council, and at his discretion shall advise the President and the Executive Council.

PART IV - EXECUTIVE COUNCIL

Article 17

Composition

The Executive Council shall consist of:

- a) The President,
- b) The Vice-Presidents,

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Article 15
Présentations de candidatures

Un Comité de Présentation de candidatures est mis en place avec mission de présenter des personnes physiques en vue de leur élection à toute fonction au sein du Comité Maritime International.

Le Comité de Présentation de candidatures se compose de:

- a) un président, qui a voix prépondérante en cas de partage des voix, et qui est élu par le Conseil exécutif;
- b) le Président et les anciens Présidents;
- c) un Membre élu par les Vice-Présidents;
- d) un Membre élu par les Conseillers exécutifs.

Nonobstant les dispositions de l'alinéa qui précède, aucun candidat ne peut siéger au sein du Comité de Présentation pendant la discussion des présentations intéressant la fonction à laquelle il est candidat.

Agissant au nom du Comité de Présentation, son Président détermine tout d'abord s'il y a des Membres du Bureau qui, étant rééligibles, sont disponibles pour accomplir un nouveau mandat. Il demande ensuite l'avis des Associations membres au sujet des candidats à présenter. Tenant compte de ces avis, le Comité de Présentation formule alors des propositions.

Le président du Comité de Présentation transmet les propositions ainsi formulées à l'Administrateur suffisamment à l'avance pour qu'elles soient diffusés au plus tard quatre-vingt-dix jours avant l'Assemblée annuelle appelée à élire des candidats proposés.

Des Associations membres peuvent, indépendamment du Comité de Présentation, formuler des propositions d'élection pour toute fonction, pourvu que celles-ci soient transmises à l'Administrateur au plus tard trois jours ouvrables avant l'Assemblée annuelle appelée à élire des candidats proposés.

Le Comité Exécutif peut présenter des propositions d'élection aux fonctions de Secrétaire général, Trésorier, et/ou Administrateur. Telles propositions seront transmises au Président du Comité des Présentations au plus tard cent-vingt jours avant l'Assemblée annuelle appelée à élire des candidats proposés.

Article 16
Le Président sortant

Le Président sortant du Comité Maritime International a la faculté d'assister à toutes les réunions du Conseil exécutif, et peut, s'il le désire, conseiller le Président et le Conseil exécutif.

4ème PARTIE - CONSEIL EXÉCUTIF**Article 17**
Composition

Le Conseil exécutif est composé:

- a) du Président,
- b) des Vice-Présidents,

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- c) The Secretary-General,
- d) The Treasurer,
- e) The Administrator (if an individual),
- f) The Executive Councillors, and
- g) The Immediate Past President.

Article 18

Functions

The functions of the Executive Council are:

- a) To receive and review reports concerning contact with:
 - (i) The Member Associations,
 - (ii) The CMI Charitable Trust, and
 - (iii) International organizations;
- b) To review documents and/or studies intended for:
 - (i) The Assembly,
 - (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
 - (iii) International organizations, informing them of the views of the Comité Maritime International on relevant subjects;
- c) To initiate new work within the object of the Comité Maritime International, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairmen, Deputy Chairmen and Rapporteurs for such bodies, and to supervise their work;
- d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the Comité Maritime International;
- e) To encourage and facilitate the recruitment of new members of the Comité Maritime International;
- f) To oversee the finances of the Comité Maritime International and to appoint an Audit Committee;
- g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;
- h) To nominate, for election by the Assembly, independent auditors of the annual financial statements prepared by the Treasurer and/or the accounts of the Comité Maritime International, and to make interim appointments of such auditors if necessary;
- i) To review and approve proposals for publications of the Comité Maritime International;
- j) To set the dates and places of its own meetings and, subject to Article 5, of the meetings of the Assembly, and of Seminars and Colloquia convened by the Comité Maritime International;
- k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars and Colloquia convened by the Comité Maritime International;
- l) To carry into effect the decisions of the Assembly;

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- c) du Secrétaire général,
- d) du Trésorier,
- e) de l'Administrateur, s'il est une personne physique,
- f) des Conseillers exécutifs,
- g) du Président sortant.

Article 18**Fonctions**

Les fonctions du Conseil exécutif sont:

- a) de recevoir et d'examiner des rapports concernant les relations avec:
 - (i) les Associations membres,
 - (ii) le Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), et
 - (iii) les organisations internationales;
- b) d'examiner les documents et études destinés:
 - (i) à l'Assemblée,
 - (ii) aux Associations membres, concernant l'oeuvre du Comité Maritime International, et en les avisant de tout développement utile,
 - (iii) aux organisations internationales, pour les informer des points de vue du Comité Maritime International sur des sujets adéquats;
- c) d'aborder l'étude de nouveaux travaux entrant dans le domaine du Comité Maritime International, de créer à cette fin des comités permanents, des commissions internationales et des groupes de travail, de désigner les Présidents, les Présidents Adjointes et les Rapporteurs de ces comités, commissions et groupes de travail, et de contrôler leur activité;
- d) d'aborder toute autre étude que ce soit pourvu qu'elle s'inscrive dans la poursuite de l'objet du Comité Maritime International, et de nommer toutes personnes à cette fin;
- e) d'encourager et de favoriser le recrutement de nouveaux Membres du Comité Maritime International;
- f) de contrôler les finances du Comité Maritime International et de nommer un Comité de révision;
- g) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Secrétaire général, de Trésorier ou d'Administrateur;
- h) de présenter pour élection par l'Assemblée des réviseurs indépendants chargés de réviser les comptes financiers annuels préparés par le Trésorier et/ou les comptes du Comité Maritime International, et, au besoin, de pourvoir à titre provisoire à une vacance de la fonction de réviseur;
- i) d'examiner et d'approuver les propositions de publications du Comité Maritime International;
- j) de fixer les dates et lieux de ses propres réunions et, sous réserve de l'article 5, des réunions de l'Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;
- k) de proposer l'ordre du jour des réunions de l'Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;
- l) d'exécuter les décisions de l'Assemblée;

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m) To report to the Assembly on the work done and on the initiatives adopted.

The Executive Council may establish its own Committees and Working Groups, and delegate to them such portions of its work as it deems suitable. Reports of such Committees and Working Groups shall be submitted to the Executive Council and to no other body.

Article 19

Meetings and Quorum

The Executive Council shall meet not less often than twice annually; it may when necessary meet by electronic means, but shall meet in person at least once annually unless prevented by circumstances beyond its control. The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are fully informed and a majority respond affirmatively in writing. Any actions taken without a meeting shall be ratified when the Executive Council next meets in person.

At any meeting of the Executive Council seven members, including the President or a Vice-President and at least three Executive Councillors, shall constitute a quorum. All decisions shall be taken by a simple majority vote. The President or, in his absence, the senior Vice-President in attendance shall have a casting vote where the votes are otherwise equally divided.

PART V - INTERNATIONAL CONFERENCES

Article 20

Composition and Voting

The Comité Maritime International shall meet in International Conference upon dates and at places approved by the Assembly, for the purpose of discussing and adopting resolutions upon subjects on an agenda likewise approved by the Assembly.

The International Conference shall be composed of all Members of the Comité Maritime International and such Observers as are approved by the Executive Council.

Each Member Association which has the right to vote may be represented by ten delegates and the Titulary Members who are members of that Association. Each Consultative Member may be represented by three delegates. Each Observer may be represented by one delegate only.

Each Member Association present and entitled to vote shall have one vote in the International Conference; no other Member and no Officer of the Comité Maritime International shall have the right to vote in such capacity.

The right to vote cannot be delegated or exercised by proxy.

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.

Constitution

m) de faire rapport à l'Assemblée sur le travail accompli et sur les initiatives adoptées.

Le Conseil exécutif peut créer ses propres comités et groupes de travail et leur déléguer telles parties de sa tâche qu'il juge convenables. Ces comités et groupes de travail feront rapport au seul Conseil exécutif.

Article 19

Réunions et quorum

Le Conseil exécutif se réunira au moins deux fois par an. Il peut se réunir par le biais de moyens électroniques. Mais une réunion en présence physique des Membres du Conseil exécutif se tiendra au moins une fois par an, sauf empêchement par des circonstances en dehors de la volonté du Conseil exécutif. Le Conseil exécutif peut toutefois, lorsque les circonstances l'exigent, prendre des décisions sans qu'une réunion ait été convoquée, pourvu que tous ses Membres aient été entièrement informés et qu'une majorité ait répondu affirmativement par écrit. Toute action prise sans réunion en présence physique des Membres du Conseil exécutif sera ratifiée à la prochaine réunion en présence des Membres du Conseil exécutif.

Lors de toute réunion du Conseil exécutif, celui-ci ne délibère valablement que si sept de ses Membres, comprenant le Président ou un Vice-Président et trois Conseillers exécutifs au moins, sont présents. Toute décision est prise à la majorité simple des votes émis. En cas de partage des voix, celle du Président ou, en son absence, celle du plus ancien Vice-Président présent, est prépondérante.

5ème PARTIE - CONFÉRENCES INTERNATIONALES

Article 20

Composition et Votes

Le Comité Maritime International se réunit en Conférence Internationale à des dates et lieux approuvés par l'Assemblée aux fins de délibérer et d'adopter des résolutions sur des sujets figurant à un ordre du jour également approuvé par l'Assemblée.

La Conférence Internationale est composée de tous les Membres du Comité Maritime International et d'observateurs dont la présence a été approuvée par le Conseil exécutif.

Chaque Association membre, ayant le droit de vote, peut se faire représenter par dix délégués et par les Membres titulaires, membres de leur Association. Chaque Membre consultatif peut se faire représenter par trois délégués. Chaque observateur peut se faire représenter par un délégué seulement.

Chaque Association membre présente et jouissant du droit de vote dispose d'une voix à la Conférence Internationale, à l'exclusion des autres Membres et à l'exclusion des Membres du Bureau du Comité Maritime International, en leur qualité de membre de ce Bureau.

Le droit de vote ne peut pas être délégué ni exercé par procuration.

Les résolutions des Conférences Internationales sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote.

PART VI - FINANCE AND GOVERNING LAW

Article 21

Arrears of Subscriptions

A Member Association remaining in arrears of payment of its subscription for more than one year from the end of the calendar year for which the subscription is due shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay subscriptions and who remain in arrears of payment for two or more years from the end of the calendar year for which the subscription is due shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Failure to make full payment of subscriptions owed for three or more calendar years shall be sufficient cause for expulsion of the Member in default. A Member expelled by the Assembly solely for failure to make payment of subscriptions may be reinstated by vote of the Executive Council following payment of arrears, subject to ratification by the Assembly. The Assembly may authorise the President and/or Treasurer to negotiate the amount and payment of arrears with Members in default, subject to approval of any such agreement by the Executive Council.

Subscriptions received from a Member in default shall, unless otherwise provided in a negotiated and approved agreement, be applied to reduce arrears in chronological order, beginning with the earliest calendar year of default.

Article 22

Financial Matters and Liability

The Administrator and the auditors shall receive compensation as determined by the Executive Council.

Members of the Executive Council and Chairmen of Standing Committees, Chairmen and Rapporteurs of International Sub-Committees and Working Groups, when travelling on behalf of the Comité Maritime International, shall be entitled to reimbursement of travelling expenses, as directed by the Executive Council.

The Executive Council may also authorise the reimbursement of other expenses incurred on behalf of the Comité Maritime International.

The Comité Maritime International shall not be liable for the acts or omissions of its Members. The liability of the Comité Maritime International shall be limited to its assets.

Article 23

Governing Law

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law, including the Act of 25th October 1919 (Moniteur belge of 5th November 1919), as subsequently amended, granting

6ème PARTIE - FINANCES

Article 21

Retards dans le paiement de Cotisations

Une Association membre qui demeure en retard de paiement de ses cotisations pendant plus d'un an à compter de la fin de l'année civile pendant laquelle la cotisation est due est considérée en défaut et ne jouit pas du droit de vote jusqu'à ce qu'il ait été remédié au défaut de paiement.

Les membres redevables de cotisations et qui demeurent en retard de paiement pendant deux ans au moins à compter de la fin de l'année civile pendant laquelle la cotisation est due ne bénéficient plus, sauf décision contraire du Conseil exécutif, de l'envoi des publications ni des autres droits et avantages appartenant aux membres, jusqu'à ce qu'il ait été remédié au défaut de paiement.

Une carence dans le paiement des cotisations dues pour trois ans au moins constitue un motif suffisant pour l'exclusion d'un Membre. Lorsqu'un Membre a été exclu par l'Assemblée au motif d'une omission dans le paiement de ses cotisations, le Conseil exécutif peut voter sa réintégration en cas de paiement des arriérés et sous réserve de ratification par l'Assemblée. L'Assemblée peut donner pouvoir au Président et/ou au Trésorier de négocier le montant et le paiement des arriérés avec le Membre qui est en retard, sous réserve d'approbation par le Conseil exécutif.

Les cotisations reçues d'un membre en défaut sont, sauf accord contraire approuvé, imputées par ordre chronologique, en commençant par l'année civile la plus ancienne du défaut de paiement.

Article 22

Questions financières et responsabilités

L'Administrateur et les réviseurs reçoivent une indemnisation fixée par le Conseil exécutif.

Les membres du Conseil exécutif et les Présidents des comités permanents, les Présidents et rapporteurs des commissions internationales et des groupes de travail ont droit au remboursement des frais de voyages accomplis pour le compte du Comité Maritime International, conformément aux instructions du Conseil exécutif.

Le Conseil exécutif peut également autoriser le remboursement d'autres frais exposés pour le compte du Comité Maritime International.

Le Comité Maritime International ne sera pas responsable des actes ou omissions de ses Membres. La responsabilité du Comité Maritime International est limité à ses avoirs.

Article 23

Loi applicable

Toute question non résolue par les présents statuts le sera par application du droit belge, notamment par la loi du 25 octobre 1919 (Moniteur belge 5 novembre 1919) accordant la personnalité civile aux associations

juridical personality to international organizations dedicated to philanthropic, religious, scientific, artistic or pedagogic objects, and to other laws of Belgium as necessary.

PART VII - ENTRY INTO FORCE AND DISSOLUTION

Article 24

Entry into Force ⁽²⁾

This Constitution shall enter into force on the tenth day following its publication in the *Moniteur belge*. The Comité Maritime International established in Antwerp in 1897 shall thereupon become an international organization pursuant to the law of 25th October 1919, whereby international organizations having a philanthropic, religious, scientific, artistic or pedagogic object are granted juridical personality (*Moniteur belge* 5 November 1919). Notwithstanding the later acquisition of juridical personality, the date of establishment of the Comité Maritime International for all purposes permitted by Belgian law shall remain 6th June 1897.

Article 25

Dissolution and Procedure for Liquidation

The Assembly may, upon written motion received by the Administrator not less than one-hundred eighty days prior to a regular or extraordinary meeting, vote to dissolve the Comité Maritime International. At such meeting a quorum of not less than one-half of the Member Associations entitled to vote shall be required in order to take a vote on the proposed dissolution. Dissolution shall require the affirmative vote of a three-fourths majority of all Member Associations present, entitled to vote, and voting. Upon a vote in favour of dissolution, liquidation shall take place in accordance with the law of Belgium. Following the discharge of all outstanding liabilities and the payment of all reasonable expenses of liquidation, the net assets of the Comité Maritime International, if any, shall devolve to the Comité Maritime International Charitable Trust, a registered charity established under the law of the United Kingdom.

⁽²⁾ Article 24 provided for the entry into force the tenth day following its publication in the *Moniteur belge*. However, a statutory provision which entered into force after the voting of the Constitution by the Assembly at Singapore and prior to the publication of the Constitution in the *Moniteur belge*, amended the date of acquisition of the juridical personality, and consequently the date of entry into force of the Constitution, which could not be later than the date of the acquisition of the juridical personality. Reference is made to footnote 1 at page 8.

Constitution

internationales poursuivant un but philanthropique, religieux, scientifique, artistique ou pédagogique telle que modifiée ou complétée ultérieurement et, au besoin, par d'autres dispositions de droit belge.

7ème PARTIE - ENTREE EN VIGUEUR ET DISSOLUTION

Article 24

Entrée en vigueur ⁽²⁾

Les présents statuts entrent en vigueur le dixième jour après leur publication au Moniteur belge. Le Comité Maritime International établi à Anvers en 1897 sera alors une Association au sens de la loi belge du 25 octobre 1919 accordant la personnalité civile aux associations internationales poursuivant un but philanthropique, religieux, scientifique, artistique ou pédagogique et aura alors la personnalité morale. Par les présents statuts les Membres prennent acte de la date de fondation du Comité Maritime International, comme association de fait, à savoir le 6 juin 1897.

Article 25

Procédure de dissolution et de liquidation

L'Assemblée peut, sur requête adressée à l'Administrateur au plus tard cent quatre vingt jours avant une réunion ordinaire ou extraordinaire, voter la dissolution du Comité Maritime International. La dissolution requiert un quorum de présences d'au moins la moitié des Associations Membres en droit de voter et une majorité de trois quarts de votes des Associations Membres présentes, en droit de voter, et votant. En cas de vote en faveur d'une dissolution, la liquidation aura lieu conformément au droit belge. Après l'apurement de toutes les dettes et le paiement de toute dépense raisonnable relative à la liquidation, le solde des avoirs du Comité Maritime International, s'il y en a, reviendront au Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), une personne morale selon le droit du Royaume Uni.²

⁽²⁾ L'article 24 prévoyait l'entrée en vigueur le dixième jour suivant la publication des statuts au Moniteur belge. Toutefois, une disposition légale entrée en vigueur après le vote de la Constitution par l'Assemblée à Singapour et avant la publication des statuts, a modifié la date de l'acquisition de la personnalité morale, et ainsi la date de l'entrée en vigueur des statuts, qui ne pouvait être postérieure à la date de l'acquisition de la personnalité morale. Voir note 1 en bas de la page 9.

RULES OF PROCEDURE*

1996¹

Rule 1

Right of Presence

In the Assembly, only Members of the CMI as defined in Article 3 (I) of the Constitution, members of the Executive Council as provided in Article 4 and Observers invited pursuant to Article 4 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 (I) of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 8 and Observers invited pursuant to Article 20 may be present as of right.

Observers may, however, be excluded during consideration of certain items of the agenda if the President so determines.

All other persons must seek the leave of the President in order to attend any part of the proceedings .

Rule 2

Right of Voice

Only Members of the CMI as defined in Article 3 (I) of the Constitution and members of the Executive Council may speak as of right; all others must seek the leave of the President before speaking. In the case of a Member Association, only a listed delegate may speak for that Member; with the leave of the President such delegate may yield the floor to another member of that Member Association for the purpose of addressing a particular and specified matter.

Rule 3

Points of Order

During the debate of any proposal or motion any Member or Officer of the CMI having the right of voice under Rule 2 may rise to a point of order and the point of order shall immediately be ruled upon by the President. No one rising to a point of order shall speak on the substance of the matter under discussion.

1. Adopted in Brussels, 13th April 1996.

Rules of Procedure

All rulings of the President on matters of procedure shall be final unless immediately appealed and overruled by motion duly made, seconded and carried.

Rule 4

Voting

For the purpose of application of Article 6 of the Constitution, the phrase “Member Associations present, entitled to vote, and voting” shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 7 or 21, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI *Yearbook*.

If a vote is equally divided the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot, the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the proposal of the Nominating Committee pursuant to Article 15, then the candidate(s) so proposed may be declared by the President to be elected to that office by acclamation.

Rule 5

Amendments to Proposals

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

Rule 6

Secretary and Minutes

The Secretary-General or, in his absence, an Officer of the CMI appointed by the President, shall act as secretary and shall take note of the proceedings and prepare the minutes of the meeting. Minutes of the

Assembly shall be published in the two official languages of the CMI, English and French, either in the *CMI Newsletter* or otherwise distributed in writing to the Member Associations.

Rule 7

Amendment of these Rules

Amendments to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations not less than 60 days before the annual meeting of the Assembly at which the proposed amendments will be considered.

Rule 8

Application and Prevailing Authority

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis*, the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the CMI.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail in accordance with Article 7(h). Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis*, pending formal amendment of the Rules of Procedure in accordance with Rule 7.

GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS

1999¹

Titulary Members

No person shall be proposed for election as a Titulary Member of the Comité Maritime International without supporting documentation establishing in detail the qualifications of the candidate in accordance with Article 3 (I)(c) of the Constitution. The Administrator shall receive any proposals for Titulary Membership, with such documentation, not less than sixty (60) days prior to the meeting of the Assembly at which the proposal is to be considered.

Contributions to the work of the Comité may include active participation as a voting Delegate to two or more International Conferences or Assemblies of the CMI, service on a CMI Working Group or International Sub-Committee, delivery of a paper at a seminar or colloquium conducted by the CMI, or other comparable activity which has made a direct contribution to the CMI's work. Services rendered in furtherance of international uniformity may include those rendered primarily in or to another international organization, or published writing that tends to promote uniformity of maritime law or related commercial practice. Services otherwise rendered to or work within a Member Association must be clearly shown to have made a significant contribution to work undertaken by the Comité or to furtherance of international uniformity of maritime law or related commercial practice.

Provisional Members

Candidates for Provisional Membership must not merely express an interest in the object of the CMI, but must have *demonstrated* such interest by relevant published writings, by activity promoting uniformity of maritime law and/or related commercial practice, or by presenting a plan for the organization and establishment of a new Member Association.

Periodic Review

Every three years, not less than sixty (60) days prior to the meeting of the Assembly, each Provisional Member shall be required to submit a concise report to the Secretary-General of the CMI concerning the activities organized or undertaken by that Provisional Member during the reporting period in pursuance of the object of the Comité Maritime International.

1. Adopted in New York, 8th May 1999, pursuant to Article 3 (I)(c) and (d) of the Constitution.

HEADQUARTERS OF THE CMI SIÈGE DU CMI

Everdijstraat 43
2000 ANTWERP
BELGIUM

Tel.: +32 3 227.3526 - Fax: +32 3 227.3528
E-mail: admini@cmi-imc.org
Website: www.comitemaritime.org

MEMBERS OF THE EXECUTIVE COUNCIL MEMBRES DU CONSEIL EXÉCUTIF

President - Président: **Karl-Johan GOMBRII** (2008)¹
Kristinelundveien 22, P.O.Box 3033,
Elisenberg N-0207 Oslo, Norway
Tel.: +47 22 135600
Mobile: +47 91535603
E-mail: kjgombrii@nordisk.no

Past President: **Jean-Serge ROHART**²
15, Place du Général Catroux
F-75017 Paris, France
Tel.: +33 1 46.22.51.73 - Fax: +33 1 47.66.06.37
Email: js.rohart@villeneau.com

¹ Born 1944 in Västerås, Sweden. 1971: Bachelor of law, University of Uppsala, Sweden. 1971-1972: Lecturer, School of Economics, Gothenburg, Sweden. 1972: Associate, Mannheimer & Zetterlöf, Gothenburg, Sweden. 1973-1976: Legal officer, United Nations Commission on International Trade Law, United Nations Conference on Trade and Development, Geneva, Switzerland. 1977-1981: Research fellow, Scandinavian Institute of Maritime Law, Oslo, Norway. 1982: Attorney at law, Northern Shipowners Defence Club, Oslo, Norway. 1993-2000: President, Norwegian Maritime Law Association, Oslo, Norway. 1994: Executive Councillor, Comité Maritime International, Antwerp, Belgium. 1996: Chairman of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and related subjects. 1998: Mediation Workshop, arranged by Professor Frank E.A. Sander, Harvard Law School. 1999: President of the Main Committee of the Diplomatic Conference on Arrest of Ships. 2000: Deputy Managing Director, Northern Shipowners Defence Club. 2001: Vice President, Comité Maritime International, Antwerp. Delegate of Norway to several IMO, UNCTAD and UNCITRAL meetings. Participated in the drafting of several BIMCO documents, such as BARECON 2001.

² Born 1945 in Lille, France. Studied law in Lille and Paris. Lecturer at the Universities of Rheims and Paris 1969-1978. Admitted to Paris Bar in 1972, when he became an associate to Jacques Villeneau. Partner and founder-member of the present law firm Villeneau Rohart Simon, & Associés since 1978. Chairman of Committee A (Maritime and Transport Law) of the International Bar Association 1992-1995. Treasurer (1989-1997) and subsequently President (1997-2002) of the Association Française du Droit Maritime. Titulary Member, Executive Councillor (1994-2002), and subsequently elected President of the Comité Maritime International (June 2004).

Officers

*Vice-Presidents:***Justice Johanne GAUTHIER (2008)**

Federal Court of Canada
 Trial Division
 90 Sparks Street, 11th Floor
 Ottawa, Ont. K1A 0H9, Canada
 Tel.: +1 613 996 5572 - Fax: +1 613 943.1453
 E-mail: j.gauthier@fct-cf.ca

Stuart HETHERINGTON (2005)³

Colin Biggers & Paisley
 Level 42, 2 Park Street
 Sydney NSW 2000, Australia.
 Tel.: +61 2 8281.4555 - Fax: +61 2 8281.4567
 E-mail: sw@cbp.com.au

*Secretary General:***Nigel FRAWLEY (2005)**⁴

83 Balliol St.,
 Toronto, Ontario, Canada. M4S 1C2
 Tel.: home +1 416 923.0333 - cottage + 1 518 962.4587
 Fax: +1 416 322.2083
 E-mail: nhfrawley@earthlink.net

*Administrator:***Wim FRANSEN (2002)**⁵

Everdijstraat 43
 2000 Antwerpen, Belgium
 Tel.: +32 3 203.4500 - Fax: +32 3 203.4501
 Mobile: +32 475.269486
 E-mail: wimfransen@fransenadvocaten.com

³ Educated :Wellington College, UK; read Law at Pembroke College, Cambridge, UK, awarded Exhibition 1971, MA 1975. Partner Ebsworth and Ebsworth, Sydney. 1981-1997. Partner Withnell Hetherington 1998. Called to the Bar of England and Wales at Grays Inn 1973. Admitted as a solicitor in Victoria and New South Wales 1978. President of the Maritime Law Association of Australia and New Zealand (1991-1994). Titulary Member CMI. Author Annotated Admiralty Legislation (1989). Co-author with Professor James Crawford of Admiralty Section of Transport Section in Law Book Company's "Laws of Australia".

⁴ Nigel H. Frawley was educated at the Royal Military College in Kingston, Ontario, Canada and the Royal Naval College in Greenwich, England. He served for a number of years in the Royal Canadian Navy and the Royal Navy in several warships and submarines. He commanded a submarine and a minelayer. He then resigned his commission as a Lieutenant Commander and attended Law School at the University of Toronto from 1969 to 1972. He has practised marine and aviation law since that time in Toronto. He has written a number of papers and lectured extensively. He was Chairman of the Maritime Law Section of the Canadian Bar Association from 1993 to 1995 and President of the Canadian Maritime Law Association from 1996 to 1998.

⁵ Wim Fransen was born on 26th July 1949. He became a Master of law at the University of Louvain in 1972. During his apprenticeship with the Brussels firms, Botson et Associés and Goffin & Tacquet, he obtained a 'licence en droit maritime et aérien' at the Université Libre de Bruxelles. He started his own office as a maritime lawyer in Antwerp in 1979 and since then works almost exclusively on behalf of Owners, Carriers and P&I Clubs. He is the senior partner of Fransen Advocaten. He is often appointed as an Arbitrator in maritime and insurance disputes. Wim Fransen speaks Dutch, French, English, German and Spanish and reads Italian. Since 1998 he is the President of the Belgian Maritime Law Association. He became Administrator of the CMI in June 2002.

Officers

Treasurer:
Trésorier:

Benoit GOEMANS (2001) ⁶
Goemans, De Scheemaecker Advocaten
Ellermanstraat 46 - Antwerp B-2060 Belgium
Tel.: +32 3 231.1331 - Direct: +32 3 231.5436
Fax: +32 3 231.1333
Mobile: +32 478.472991
E-mail: benoit.goemans@GDSadvocaten.be

Members:
Membres:

Giorgio BERLINGIERI ⁷
Studio Legale Berlingieri
10 Via Roma, 16121 Genoa, Italy
Tel.: +39 010 586.441 - Fax: +39 010 594.805
E-mail: slb@dirmar.it

Christopher O. DAVIS (2005) ⁸
201 St. Charles Avenue, Suite 3600,
New Orleans, LA 70170, U.S.A.
Tel.: +1 504 566.5251 - Fax: +1 504 636.3951
Mobile: +1 504 909.2917
E-mail: codavis@bakerdonelson.com

José Tomás GUZMAN SALCEDO (2003) ⁹
Hendaya 60. Of. 503,
Las Condes 7550188 Santiago, Chile
Tel.: +56 2 3315860/61/62/63 - Fax: +56 2 3315811
E-mail: jtomasguzman@jtguzmanycia.cl

⁶ Candidate in Law, (University of Louvain), 1984; Licentiate in Law, (University of Louvain), 1987; LL.M. in Admiralty, Tulane, 1989; Diploma Maritime and Transport Law, Antwerp, 1990; Member of the Antwerp bar since 1987; Professor of Maritime Law, University of Louvain; Professor of Marine Insurance, University of Hasselt; founding partner of Goemans, De Scheemaecker Advocaten; Member of the board of directors and of the board of editors of the Antwerp Maritime Law Reports ("Jurisprudence du Port d'Anvers"); publications in the field of Maritime Law in Dutch, French and English; Member of the Team of Experts to the preparation of the revision of the Belgian Maritime Code and Royal Commissioner to the revision of the Belgian Maritime Code.

⁷ Advocate to the Supreme Court of Cassation, Senior Partner Studio Legale Berlingieri, Titulary Member Comité Maritime International, President Italian Maritime Law Association, associated editor of *Il Diritto Marittimo* and of *Diritto e Trasporti* and member of the Contributory Board of *Droit Maritime Français*.

⁸ Born 24 January 1956 in Santiago, Chile. Tulane University School of Law, Juis Doctor, cum laude, 1979; University of Virginia, Bachelor of Arts, with distinction, 1976; Canal Zone College, Associate of Arts, with honors, 1974. Admitted to practice in 1979 and is a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC and currently represents maritime, energy and insurance clients in litigation and arbitration matters. He has lectured and presented papers at professional seminars sponsored by various bar associations, shipowners, and marine and energy underwriters in Asia, Latin America and the United States. He is a member of the Advisory Board of the Tulane Maritime Law Journal, the New Orleans Board of Trade, and the Board of Directors of the Maritime Law Association of the United States. He became a Titulary Member of the CMI in 2000 and a member of the Executive Council in 2005.

⁹ Independent practice specialized in Maritime & Insurance Law, Average and Loss Adjustment. Until year 2000, a partner of Ansietta, Cornejo & Guzmán, Law Firm established in 1900 in the same speciality. Has lectured on Maritime and Insurance Law at the Catholic University of Chile and at the University of Chile, Valparaíso. Titulary Member of the Comité Maritime International. Vice President of the Chilean Maritime Law Association. Vice President for Chile of the Iberic American Institute of Maritime Law. Past President of the Association of Loss Adjusters of Chile. Arbitrator at the Mediation and Arbitration Centers of the Chambers of Commerce of Santiago and Valparaíso. Arbitrator at the Chilean Branch of AIDA (Association Internationale de Droit d'assurance). Co-author of the Maritime and Marine Insurance Legislation at present in force as part of the Commercial Code. Member of the Commission for the modification of Insurance Law. Participated in drafting the law applicable to loss adjusting.

*Officers***Måns JACOBSSON (2007)**¹⁰

Östergatan 27 - SE-211 25 Malmö - Sweden
 Tel Malmö +46 40 233001 - Tel summer house +46 40 471863
 Email: mans.jacobsson@me.com

Sergej LEBEDEV (2005)¹¹

Maritime Arbitration Commission,
 Russian Chamber of Commerce & Industry
 Ilyinka Str. 6, 109012 Moscow, Russia
 Tel.: +7 095 9290177 - Email: snlebedev@gmail.com

Dihuang SONG¹²

Commerce & Finance Law Office,
 6F NCI Tower,
 A12 Jianguomenwai Avenue, Chaoyang District,
 Beijing 100022, P. R. China
 Tel.: +86 10 65693399 - 65693828(d)
 Mobile: +86 139 1032 4678
 Fax: +86 10 65693838 – 65693836 - 65693837
 Email: songdihuang@tongshang.com
 Website: www.tongshang.com

¹⁰ Born 1939 in Malmö, Sweden. Studies at Princeton University (USA) 1957-58. Bachelor of Law Lund University, Sweden 1964. Served as a judge at district court and appellate court level in Sweden 1964-1970. Appointed President of Division of the Stockholm Court of Appeal 1985. Legal advisor in the Department for International Affairs of the Swedish Ministry of Justice 1970-1981 and Head of that Department 1982-1984; responsible for the preparation of legislation in various fields of civil law, mainly transport law, nuclear law and industrial property; represented Sweden in negotiations in a number of intergovernmental organisations, e.g. the International Maritime Organization (IMO). Director of the International Oil Pollution Compensation Funds 1985-2006. Served as arbitrator in Sweden. Member of the Panel of the Singapore Maritime Arbitration Centre and of the International Maritime Conciliation and Mediation Panel. Published (together with two co-authors) a book on patent law as well as numerous articles in various fields of law. Visiting professor at the World Maritime University in Malmö (Sweden) and at the Maritime Universities in Dalian and Shanghai (People's Republic of China). Lecturer at the IMO International Maritime Law Institute in Malta, the Summer Academy at the International Foundation for the Law of the Sea in Hamburg and universities in the United Kingdom and Sweden. Member of the Steering Committee of the London Shipping Law Centre. Awarded the Honorary Degree of Doctor of Laws by the University of Southampton 2007. Elected Executive Councillor 2007.

¹¹ Born in 1934 in Sebastopol; married; graduated from the Law School of the Institute of Foreign Trade in Moscow; 1961/62 school year in the University of Michigan, USA; in 1963 got the degree of candidate of legal sciences at the Moscow Institute of International Relations where now is a professor in the Private International and Civil Law Department; acted as arbitrator in about 600 international commercial and maritime cases in Russia and abroad, particularly in Stockholm, Warsaw, London, Beijing, Geneva, Zurich, Kiev; since 1972 the president of the Maritime Arbitration Commission also a member of the Presidium of the International Commercial Arbitration Court of the Russian Chamber of Commerce and Industry; Vice-President of the Russian Association of Maritime Law and International Law; participated as an expert in international organizations including UNCITRAL (since 1970), Council of Mutual Economic Assistance, International Council for Commercial Arbitration, UN Compensation Commission, Economic Commission for Europe, Hague Conference of Private International Law and at diplomatic conferences for adoption of conventions on sale of goods (1974, 1980, 1985), sea carriage (Hamburg, 1978), liability of transport terminals (Vienna, 1990), arbitration (1972, 1976, 1985, 1998) etc.; have books, articles and other publications on legal matters of international commerce, including many writings on arbitration and maritime law. Honours Jurist of the Russian Federation (1994); member of the Russian President's Council for Judicial Reforms (appointed in 1996, reappointed in 2000 and 2004); awarded Swedish Order "Polar Star" (2003).

¹² Born September 11, 1962. Education: 1993-1994 LLM, University of Southampton 1979-1983 Bachelor of Science, Dalian Maritime University. Language: Mandarin and English. Employment history and Experiences: 09/2001 - now: Partner of Commerce & Finance Law Offices. 03/1997-08/2001: Henry & Co. Law Firm of Guangdong as Consultant. 08/1983-02/1997: China Council for the

Officers

Louis N. MBANEFO (2008)¹³
 230 Awolowo Road
 P.O.Box 54409, Ikoyi
 Lagos, Nigeria
 Tel.: +234 1 2694085 - Fax: +234 1 461 5207
 Mobile: +234 802 301 3964
 Email: info@mbanefolaw.com

Andrew TAYLOR (2008)¹⁴
 c/o Reed Smith
 Beaufort House, 15 St. Botolph Street
 London EC3A 7EE, United Kingdom
 Tel.: +44 20 7772 5881 - Fax: +44 20 7247 5091
 Email: adtaylor@reedsmith.com

Publications Editor:

Francesco BERLINGIERI
 10 Via Roma, 16121 Genoa, Italy
 Tel.: +39 010 586.441 - Fax: +39 010 594.805
 E-mail: slb@dirmar.it

Auditors:

DE MOL, MEULDERMANS & PARTNERS
 Mr. Kris Meuldermans
 Herentalsebaan, 271
 B-2150 Borsbeek, Belgium
 Tel.: +32 3 322.3335 - Fax: +32 3 322.3345
 E-mail: dmaudit@skynet.be

Promotion of International Trade (CCPIT); Two years experiences in average adjustment (from 1983 to 1985); Moved to China Maritime Arbitration Commission (CMAC) since 1985. Promoted as the Deputy Chief of the Secretariat of CMAC since 1990; 01/1993-10/1994: six months with Ince & Co. in London, three months with Sinclair Roche & Temperley and a number of P & I clubs in London; three months with LeGros Buchanan & Paul in Seattle and Galland Kharach in Washington DC; Mainly focused on shipping and international trade matters, including carriage of goods by sea, collision cases, commodity disputes; ship finance; general average; experienced in litigation and arbitration; Also involved in various arbitration cases in London, Singapore, Hong Kong and/or give evidence on PRC laws before the courts and/or arbitrators of various jurisdictions, including London, Singapore etc. Academic Society: Arbitrator of China Maritime Arbitration Commission and China International Economic and Trade Arbitration Commission; Deputy Secretary General of China Maritime Law Association; Secretary General of Maritime Law Committee under All-China Lawyers' Association Supporting member of London Maritime Arbitrators' Association. Arbitrator of *Chambre Arbitrale de Paris*.

¹³ Born 1944 in Onitsha, Nigeria. Educated at Marlborough College, U.K; read law at Queens' College, Cambridge, U.K B.A.in 1967, LL.M 1968, M.A 1970. Called to the English Bar (Middle Temple) Nov.1968. Called to the Nigerian Bar in June 1973 and set up law partnership Mbanefo & Mbanefo in 1974. Currently he runs the law firm Louis Mbanefo & Co. in Lagos. Has appeared as counsel in many of the leading Nigerian shipping cases and was appointed a Senior Advocate of Nigeria (SAN) in May 1988. A founder member of the Nigerian Maritime Law Association, he is the current Vice President. He has been Chairman of the Nigerian National Shipping Line and Chairman of a Ministerial Committee to review and update the Nigerian shipping laws. He is the author of the Nigerian Shipping Law series and was responsible for the preparation of the Admiralty Jurisdiction Act 1991 and the Merchant Shipping Act 2007 for the Nigerian Government. He has been involved with IMLI since its inception in 1988.

¹⁴ Born in 1952, he was educated at Magdalen College School and Lincoln College Oxford (MA 1975). He joined Richards Butler (now Reed Smith Richards Butler LLP) 1977 and qualified as a solicitor in 1980. He was elected Partner in 1983 and became Chairman (Senior Partner) of Richards Butler from 2000-2005. He is the Secretary of the British Maritime Association and is a joint author of *Voyage Charters, 3rd Edition 2007* Informa and a contributor of *Legal issues relating to Time Charterparties* Informa 2008.

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10 Via Roma, 16121 Genova, Italia.

Tel.: +39 010 586.441 - Fax: +39 010 594.805 - E-mail: slb@dirmar.it

PRESIDENT HONORIS CAUSA**Patrick J.S. GRIGGS**

International House, 1 St. Katharine's Way

London E1W 1AY, England

Tel.: (20) 7481.0010 - Fax: (20) 7481.4968 - E-mail: pm.griggs@yahoo.co.uk

VICE PRESIDENT HONORIS CAUSA**Frank L. WISWALL JR.**

Meadow Farm

851 Castine Road

Castine, Maine 04421-0201, U.S.A.

Tel.: +1 207 326.9460 - Fax: +1 202 572.8279 - E-mail: FLW@Silver-Oar.com

HONORARY VICE-PRESIDENTS**Eugenio CORNEJO FULLER**

Prat 827, Piso 12, Casilla 75, Valparaiso, Chile

Fax: +56 32 252.622.

J. Niall MCGOVERN

56 Woodview, Mount Merrion Avenue

Blackrock, Co. Dublin, Ireland

Tel: (01)210 9193 - Mobile: 087 949 2011

Tsuneo OHTORI

6-2-9-503 Hongo, Bunkyo-ku, Tokyo 113, Japan.

Jan RAMBERG

Centralvägen 35, 18357 Täby, Sweden

Tel.: +46 8 756.6225/756.5458 - Fax: +46 8 756.2460 - E-mail: jan.ramberg@intralaw.se

Honorary Officers

José D. RAY

25 de Mayo 489, 5th fl., 1339 Buenos Aires, Argentina

Tel.: +54 11 4311.3011 - Fax: +54 11 4313.7765 - E-mail: jdray@ciudad.com.ar

Hisashi TANIKAWA

c/o Japan Energy Law Institute

Tanakayama Bldg., 7F, 4-1-20 Toranomom Minato-ku

Tokyo 105-0001, Japan.

Tel.: +81 3 3434.7701 - Fax: +81 3 3434.7703 - E-mail: y-okuma@jeli.gr.jp

William TETLEY

McGill University, 3644 Peel Street, Montreal, Quebec H3A 1W9, Canada

Tel.: +1 514 398.6619 (Office) +1 514 733.8049 (home) - Fax: +1 514 398.4659

E-mail: william.tetley@mcgill.ca - Website: <http://tetley.law.mcgill.ca>

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Leandro N. Alem 928 - 7° piso, Ciudad Autónoma de Buenos Aires, República Argentina,
C.P. C1001AAR. - Tel.: +54 11 4310.0100 int. 2519 - Fax +54 11 4310.0200
E-mail: ACC@marval.com.ar - Website: www.aadm.org.ar

Established: 1905

Officers:

President: Alberto C. CAPPAGLI, Marval, O'Farrell & Mairal, Av. Leandro N. Alem 928, 7° piso, 1001 Buenos Aires. Tel.: +54 11 4310.0100 - Fax +54 11 4310.0200 - E-mail: ACC@marval.com.ar

Honorary President: José Domingo RAY, 25 de Mayo 489, 5th Floor, 1002 Buenos Aires. Tel.: +54 11 4311.3011 - Fax: +54 11 4313.7765 - E-mail: jdray@ciudad.com.ar

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Assistant Secretary: Fernando ROMERO CARRANZA, Llerena & Asociados Abogados, Av. L. N. Alem 356, piso 13, Tel.: +54 11 4314.2670 - Fax: +54 11 4314.6080 - E-mail: frcarranza@llerena.com.ar

Treasurer: Pedro G. BROWNE, Browne & Cia., Lavalle 381, piso 5°, 1047 Buenos Aires. Tel.: +54 11 4314.7138/2126/8037 - 4314-4242 - Fax: +54 11 4314.0685 - E-mail: peterbrowne@browne.com.ar

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Assistant Auditor: Hernán LÓPEZ SAAVEDRA, Tel.: +54 11 4515.0040 (int. 27 o 48) - E-mail: hernan@lsa-abogados.com.ar

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AUSTRALIA AND NEW ZEALAND**

Attn. Sarah MASTERS, Level 16, Quay Central, 95 North Quay, Brisbane QLD 4000, Australia. – E-mail: mlaanz@hotmail.com - Website: www.mlaanz.org

Established: 1974

Officers:

President: Sarah DERRINGTON, Professor of Admiralty Law, BEL Faculty, University of Queensland, St Lucia QLD 4172. Tel: +61 7 3365 3320 – Fax: +61 7 3365 1466 – Email: president@mlaanz.org or sderrington@bel.uq.edu.au

Australian Vice-President: Matthew HARVEY, Barrister, Owen Dixon Chambers West, 525 Lonsdale Street, Melbourne VIC 3000. Tel: +61 3 9225 6826 – Fax: +61 3 9225 8679 – Email: vpaust@mlaanz.org

New Zealand Vice President: Matthew FLYNN, McElroys, Level 15 Tower Centre, 45 Queen Street, Auckland, New Zealand. Tel: +64 9 307 2003 – Fax: +64 9 309 7558 – Email: vpnz@mlaanz.org

Executive Secretary: Paul BAXTER, DLA Phillips Fox, PO Box 7804, Waterfront Place, Brisbane QLD 4000, Australia. Tel.: +61 7 3246.4093 – Fax: +61 7 3229.4077 – E-mail: secretary@mlaanz.org

Treasurer: Commander Ian CAMPBELL RAN, Office of Chief of Navy, R1-4-C135, Russell Offices, Canberra ACT 2600. Tel: +61 2 6265 6959 – Email: treasurer@mlaanz.org

Committee Members:
Pat SARACENI, Mallesons Stephen Jaques, Level 10, 152 St George's Terrace, Perth WA 6000. Tel: +61 8 9269 7233 - Fax: +61 8 9269 7999 - pat.saraceni@mallesons.com
Peter DAWSON, Dawson & Associates Ltd, 23 Salisbury Road, Richmond, Nelson 7050, New Zealand. Tel: +64 3 544 1964 – Email: peter@dawsonlaw.co.nz

Immediate Past President: Frazer HUNT, Piper Alderman, Level 23 Gov. Macquarie Tower, 1 Farrar Place, Sydney NSW 2001. Tel: +61 2 9253 9984 – Fax: +61 9253 9900 – Email: ipp@mlaanz.org

Administration: Sarah Masters, Level 16, Quay Central, 95 North Quay, Brisbane QLD 4000, Australia. Email: mlaanz@hotmail.com

Titulary Members:

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Member Associations

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BELGISCHE VERENIGING VOOR ZEERECHT**

(Belgian Maritime Law Association)

Mrs. Ingrid VAN CLEMEN, Ambos Advocaten

Alfred Coolsstraat 2, 2020 Antwerpen, Belgium

Tel.: +32 3 201.27.60 – Fax : +32 3 201.27.65

E-mail: Ingrid.VanClemen@amboslaw.be – Website: www.bvz-abdm.be

*Established: 1896*Officers:

President: Guy VAN DOOSSELAERE, Lange Gasthuisstraat 27, 2000 Antwerpen,
Belgium. Tel.: +32 3 203.4000 - Fax: +32 3 225.2881 -
E-mail: guy@vandoosselaere.be

Past President: Herman LANGE, Schermersstraat 30, 2000 Antwerpen, Belgium.
Tel.: +32 3 203.43.10 - Fax: +32 3 203.4318 - E-mail: h.lange@lange-law.be

Vice-Presidents:

Jef GORREBEECK, c/o Vanbreda Risk & Benefits, Plantin en Moretuslei 297, 2140
Antwerpen, Belgium. Tel.: +32 3 217.5792 – Fax: +32 3 235.3120 – E-mail:
jef.gorrebeeck@vanbreda.be

Frans PONET, Van Putlei 9, 2018 Antwerpen, Belgium. Tel.: +32 3 248.4840 –
Fax: +32 3 216.3671 – E-mail: ponet@ponet-law.be

Guy HUYGHE, Lange Nieuwstraat 47, 2000 Antwerpen, Belgium. Tel.: +32 3 206.7878
Fax: +32 3 226.1771 – E-mail: guy.huyghe@hbsv-law.be

Secretary: Mrs. Ingrid VAN CLEMEN, Ambos Advocaten, Alfred Coolsstraat 2, 2020
Antwerpen, Belgium. Tel.: +32 3 201.27.60 – Fax : +32 3 201.27.65 – E-mail:
Ingrid.VanClemen@amboslaw.be

Treasurer: Adry POELMANS, Lange Gasthuisstraat 27, 2000 Antwerpen, Belgium. Tel.:
+32 3 203.4000 – Fax: +32 3 225.2881 – E-mail: adrypoelmans@vandoosselaere.be

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BRAZIL**ASSOCIAÇÃO BRASILEIRA DE DIREITO MARITIMO**

(Brazilian Maritime Law Association)

Rua Mexico, 111 Sala 501

Rua México 111 sala 501 - Rio de Janeiro – RJ - Brasil - CEP.: 20131-142

Tel.: (55) (21) 2220-5488; (55) (21) 2524-2119 - Fax: (55) (21) 2253-0622

E-mail: ejc@carbone.com.br*Established: 1924***Officers:**

President: Dr. Artur Raimundo CARBONE, Escritório Jurídico Carbone - Av. Rio Branco, 109 - 14º andar, Rio de Janeiro - RJ – Brasil - CEP: 20040-004.

Tel.: (55) (21) 2253-3464 - Fax (55) (21) 2253-0622 - E-mail: ejc@carbone.com.br*Vice-Presidents:*

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Marlan DE MORAES MARINHO, Av. Franklin Roosevelt, 137 - Gr. 1104/1109, Centro - Rio de Janeiro - RJ – Brasil - CEP.: 20021-120. Tel.: (55) (21) 2524-8258 - E-mail: marlanmarinho@marlanmarinho.adv.br

Dr. Rucemah Leonardo GOMES PEREIRA, Average Adjuster, Av. Churchill, 60 - Gr. 303/304, Rio de Janeiro - RJ - Brasil - CEP.: 20020-050. Tel.: (55) (21) 2262-4111 - Fax: (55) (21) 2262-8226 – E-mail: rucemahpereira@yahoo.com.br

Dr. Walter DE SÁ LEITÃO, Av. Epiácio Pessoa, 100 - aptº 102 - Rio de Janeiro - RJ - Brasil - CEP.: 22410-070 - E-mail: waltersa@oi.com.br

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Member Associations

BULGARIA**BULGARIAN MARITIME LAW ASSOCIATION**

5 Major Yuriy Gagarin Street, Bl. n° 9, Entr. B, 1113 Sofia
 Tel.: +359 2 721590 - E-mail: dianamarinova@hotmail.com

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CANADA

**CANADIAN MARITIME LAW ASSOCIATION
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c/o Borden Ladner Gervais LLP, 1000 de la Gauchetière St. West,
 Suite 900, Montréal, QC H3B 5H4.
 Tel.: +1 514 954.3119 - Fax: +1 514 954.1905
 E-mail: jbolger@blgcanada.com - www.cmla.org

Established: 1951

Officers:

President: P. Jeremy BOLGER, Borden Ladner Gervais LLP, 1000 de la Gauchetière St. West, Suite 900, Montréal, QC H3B 5H4.

Tel.: +1 514 954.3119 - Fax: +1 514 954.1905 E-mail: jbolger@blgcanada.com

Immediate Past President: Michael J. BIRD, 3057 West 32nd Avenue, Vancouver BC V6L 2B9. Tel.: +1 604 266.9477 - E-mail: mjbird@shaw.ca

National Vice-President: Christopher J. GIASCHI, Giaschi & Margolis, 404-815 Hornby Street, Vancouver, BC V6Z 2E6. Tel.: +1 604 681.2866 - Fax: +1 604 681.4260 - E-mail: giaschi@admiraltylaw.com

Secretary and Treasurer: Robert C. WILKINS, Borden Ladner Gervais LLP, 1000 de la Gauchetière Street West, Suite 900, Montréal QC H3B 5H4. Tel.: +1 514 954.3184 - Fax: +1 514 954.1905 - E-mail: rwilkins@blgcanada.com

Vice President West: Thomas S. HAWKINS, Bernard & Partners, 1500-570 Granville Street, Vancouver, BC V6C 3P1. Tel.: +1 604 661.0604 - Fax: +1 604 681.1788 - E-mail: hawkins@bernardpartners.com

Vice President Central: William M. SHARPE, 40 Wynford Drive, Suite 307, Toronto, ON M3C 1J5. Tel.: +1 416 482.5321 - Fax: +1 416 322.2083 - E-mail: wmsharpe@eol.ca

Vice President Quebec: John G. O'CONNOR, Langlois Kronström Desjardins s.e.n.c., 300 - 801 Grande Allée West, Québec, QC G1S 1C1. Tel.: +1 418 682.1212 - Fax: +1 418 682.2272 - E-mail: john.oconnor@lkd.ca

Vice President East: Cecily Y. STRICKLAND, Stewart McKelvey Stirling Scales, Cabot Place, 100 New Gower Street., P.O. Box 5038, St John's, NL A1C 5V3. Tel.: +1 709 722.4270 - Fax: +1 709 722.4565 - E-mail: cstrickland@smss.com

Member Associations

Directors:

- Shelley CHAPELSKI, Bull, Housser & Tupper LLP, 2000 Royal Centre, 1055 West Georgia Street, Vancouver BC V6E 3R3 Tel.: +1 604 641.4809 - Fax: +1 604 646.2630 - E-mail: sac@bht.com
- Richard L. DESGAGNÉS, Ogilvy Renault LLP, 1 Place Ville Marie, Suite 2500, Montréal, QC H3B 1R1. Tel.: +1 514 847.4431 - Fax: +1 514 286.5474
E-mail: rdesgagnes@ogilvyrenault.com
- Danièle DION, Brisset Bishop s.e.n.c., 2020 University Street, Suite 2020, Montréal, QC H3A 2A5. Tel.: +1 514 393.3700 - Fax: +1 514 393.1211 -
E-mail: danieliedion@brissetbishop.com
- Thomas E. HART, McInnes Cooper, 1300-1969 Upper Water Street, Purdy's Wharf Tower II, P.O. Box 730, Halifax NS B3J 2V1 – Tel.: +1 902 444.8546 - Fax: +1 902 425.6350
E-mail: tom.hart@mcinnescooper.com
- Marc D. ISAACS, Isaacs & Co., 24 Duncan Street, 3rd Floor, Toronto, ON M5V 2B8.
Tel.: +1 416 601.1340 - Fax: +1 416 601.1190 - E-mail: marc@isaacsco.ca
- M. Robert JETTÉ, Q.C., Clark Drummie, 40 Wellington Row, Saint John, NB E2L 4S3.
Tel.: +1 506 633.3824 - Fax: +1 506 633.3811 - E-mail: mrj@clarkdrummie.ca
- Andrew P. MAYER, Prince Rupert Port Authority, Director, Commercial Affairs, 200 - 215 Cow Bay Road, Prince Rupert, BC V8J 1A2. Tel.: + 1 250 627.2514 - Fax: + 1 250 627. 8980 - E-mail: amayer@rupertport.com
- Graham WALKER, Borden Ladner Gervais LLP, 1200 Waterfront Centre, 200 Burrard Street, P.O. Box 48600, Vancouver BC V7X 1T2. Tel. +1 604 640.4045 - Fax: +1 604 622.5852 - E-mail: gwalker@blgcanada.com
- Matthew G. WILLIAMS, Matthew G. Williams, Ritch Durnford, 1200-1809 Barrington Street, Halifax, NS B3J 3K8. Tel.: +1 902 429-3400 (ext. 322) - Fax: +1 902 422.4713
E-mail: matthew.williams@ritchdurnford.com

Representatives of Constituent Members:

- THE ASSOCIATION OF MARITIME ARBITRATORS OF CANADA, c/o David G. COLFORD, Brisset Bishop s.e.n.c., 2020 University Street, Suite 2020, Montreal, QC H3A 2A5. Tel.: +1 514 393.3700 - Fax: +1 514 393.1211 - E-mail: davidcolford@brissetbishop.com
- THE CANADIAN BOARD OF MARINE UNDERWRITERS, c/o Doug McRAE, AXA Insurance (Canada), 2020 University Street, Suite 600, Montréal, QC H3A 2A5. Tel.: +1 514 282.6817 (ext. 4222) - Fax: +1 514 282.7958 - E-mail: douglas.mcrae@axa-assurances.ca
- CANADIAN INTERNATIONAL FREIGHT FORWARDERS ASSOCIATION, c/o Gavin MAGRATH, Magrath O'Connor LLP, 302-326 Richmond St. West, Toronto, ON M5V 1X2. Tel.: +1 416 931.0463 - Fax: +1 866 389.0743 - E-mail: gavin@magrathoconnor.com
- THE CANADIAN SHIPOWNERS ASSOCIATION, c/o Bruce G. BOWIE, 350 Sparks Street, Suite 705, Ottawa, ON K1R 7S8. Tel.: +1 613 232.3539 - Fax: +1 613 232.6211 - E-mail: bowie@shipowners.ca
- CHAMBER OF SHIPPING OF BRITISH COLUMBIA, c/o Stephen BROWN, P.O. Box 12105, 100-1111 West Hastings Street, Vancouver, BC V6E 2J3. Tel.: +1 604 681.2351 - Fax: +1 604 681.4364 - E-mail: Stephen@cosbc.ca
- THE SHIPPING FEDERATION OF CANADA, c/o Ms. Anne LEGARS, 300 rue du Saint Sacrement, Suite 326, Montreal, QC H2Y 1X4. Tel.: +1 514 849.2325 - Fax: +1 514 849.6992 - E-mail: alegars@shipfed.ca

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CHILE

ASOCIACION CHILENA DE DERECHO MARITIMO

(Chilean Association of Maritime Law)

Prat 827, Piso 12, Casilla 75, Valparaíso

Tel.: +56 32 252535/213494/254862 - Fax: +56 32 252622

E-mail: corsanfi@entelchile.net

Established: 1965

Officers:

President: Eugenio CORNEJO LACROIX, Lawyer, Average Adjuster and Professor of Maritime Law and Insurance, Hernando de Aguirre 162 of. 1202, Providencia, Santiago, Chile. - Tel. +56 2 3315860 / 3315861 / 3315862 / 3315863 - Fax: +56 2 3315811 - E-mail: eugenioornejol@cornejoycia.cl

Vice-President: Ricardo SAN MARTIN PADOVANI, Prat 827, Piso 12, Valparaíso. Tel.: +56 32 252535/213494/254862 - Fax: +56 32 252622 - E-mail: rsm@entelchile.net

Secretary: Jose Manuel ZAPICO MACKAY, Cochrane 667, Of. 606, Valparaíso. Tel.: +56 32 215816/221755 - Fax: +56 32 251671 - E-mail: josezapicom@mackaylaw.cl

Treasurer: don Eugenio CORNEJO FULLER, Prat 827, Piso 12, Casilla 75, Valparaíso - Tel.: +56 32 252535/213494/254862 - Fax: +56 32 252.622 - E-mail: eugenioornejof@entelchile.net

Member: José Tomás GUZMAN SALCEDO, Hendaya 60. Of. 503, Las Condes 7550188 Santiago, Chile. - Tel. +56 2 3315860/61/62/63 - Fax: +56 2 3315811 - E-mail: jtomasguzman@jtguzmanycia.cl

Titulary Members:

don Eugenio CORNEJO FULLER, don José Tomás GUZMAN SALCEDO, don Eugenio CORNEJO LACROIX, don Ricardo SAN MARTIN PADOVANI y don Maximiliano GENSKOWSKY MOGGIA.

CHINA

CHINA MARITIME LAW ASSOCIATION

6/F, CCOIC Building, No.2 Huapichang Hutong,
Xicheng District, Beijing, 10035, P.R. China
Tel: +86 10-8221.7768 – Fax: +86 10-8221.7766 - Email: info@cmla.org.cn
Website: www.cmla.org.cn

Established: 1988

Officers:

President: Jiafu WEI, President & CEO of China Ocean Shipping (Group) Company, F11, Ocean Plaza, 158 Fuxingmennei Street Xicheng District Beijing 100031 China-
Tel.: +86 10-66493388

Vice-Presidents (in alphabetical order):

Guofa ZHANG, Deputy Chairman of China Shipping (group) Company, No.678, Dong Da Ming Road, Shanghai, China, 200080. Tel.: +86 21-65966666

Guoyuan LIU, General Counsel of China Ocean Shipping (Group) Company, F11, Ocean Plaza, 158 Fuxingmennei Street Xicheng District Beijing 100031 China. Tel.: +86 10-66492988

Henry Hai LI, Senior Partner of Henry & Co. Law Firm, Room 1418, Tower A, ICC Building, Fuhua Road 1st., Futian District, Shenzhen, 518048, P. R. China. Tel.: +86 755-82931700 – Fax: +86 755-82931800 – E-mail: henryhaili@yahoo.com.cn

Jialin ZHU, Deputy Director General of Policy & Legislation Department of Ministry of Transport of P.R.China. 11 Jianguomennei Street Beijing P.R.China 100736. Tel.: +86 10-65292610

Leshu WANG, Secretary of the Commission for Discipline Inspecting of PICC Property and Casualty Company Limited, Tower 2, No.2 Jianguomenwai Avenue, Chaoyang District, Beijing 100022, P.R.C. Tel.: +86 10-85177990

Ping Yao, Deputy Chairman of SINOTRANS & CSC Holdings Co., Ltd. Tower A, Sinotrans Plaza, No.43a, Xizhimenbei Street, Beijing, 100044, China. Tel.: +86 10-62295599 – Fax: +86 10-62295998

Shicheng YU, President of Shanghai Maritime University, No.1550 Pu Dong Avenue, Shanghai, 200135, China. Tel.: +86 21-38284001 – Fax: +86 21-38284001 – Email: yusc@shmtu.edu.com

Songgen DONG, Vice-President of China Council for the Promotion of International Trade, No.1 Fuxingmenwai Street, Beijing, 100860, China. Tel.: +86 10-88075000 – Fax: +86 10- 68011370

YanJun WANG, Deputy Chief of the Fourth Civil Affairs Court, Supreme People's Court of P.R.C, No.27 Dong Jiao Min Xiang, Beijing, 100031, China. Tel: +86 10-65299624 – Fax: +86 10-66083792 – E-mail: wangaacc@yahoo.com.cn

Yuzhuo SI, Professor of Dalian Maritime University, Post Box 501, Building 113, Dalian Maritime University, Dalian, 116026, China. Tel.: +86 411-84729436 – Fax: +86 411-84671338 – Email: syzhuo@21cn.com

Secretary General:

Hu LI, Deputy Secretary- General of China International Economic and Trade Arbitration Commission, 6/F, CCOIC Building, No.2 Huapichang Hutong, Xicheng District, Beijing, 10035, P.R. China. Tel.: +86 10-82217788 – Fax: +86 10-82217766 – Email: lihu@cietac.org

Deputy Secretaries General:

Dihuang SONG, Lawyer of Commerce & Finance Law Office, 6F NCI Tower, A12 Jianguomenwai Avenue, Chaoyang District, Beijing 100022, P.R. China. Tel.: +86 10-65693399 – Fax: +86 10- 65693838

Member Associations

- Li LI, Manager of Legal Affairs Department of China Ocean Shipping (Group) Company, Floor 11, Ocean Plaza, 158 Fuxingmennei Street, Xicheng District, Beijing 100031, China. Tel: +86 10-66492778
- Mantang SHEN, General Legal Counselor of China Shipping (group) Company, No.700, Dong Da Ming Road, Shanghai, China, 200080. Tel.: +86 21-65966666
- Rui AN, Deputy Director of the Secretariat of China Maritime Arbitration Commission, 6/F, CCOIC Building, No.2 Huapichang Hutong, Xicheng District, Beijing, 10035, P.R. China. Tel.: +86 10-82217788 – Fax: +86 10-82217766
- Shumei WANG, Chief Justice of the Fourth Civil Affairs Court, Supreme People’s Court of P.R.C No.27 Dong Jiao Min Xiang, Beijing, 100745, China. Tel.: +86 10- 67556921 – Fax: +86 10-85120589
- Yaping ZHANG, Chief of Legislation Division of Department of Policy & legislation of Ministry of Transport of P.R.China. 11 Jianguomennei Street Beijing, 100736 P.R. China. Tel.: +86 10-65292661
- Yuntao YANG, Director of Legal Department of SINOTRANS & CSC Holdings Co., Ltd. Tower A, Sinotrans Plaza, No.43a, Xizhimenbei Street, Beijing, 100044, China. Tel.: +86 10-62295999 – Fax: +86 10-62295998 – Email: yangyuntao@sinotrans.com
- Zhihong ZOU, Director of Legal Department of the People Property Insurance Company of China, Tower 2, No.2 Jianguomenwai Avenue, Chaoyang District, Beijing 100022, P.R.C. Tel.: +86 10-85176885 – Fax: +86 10-85176887

Titulary Members:

Henry Li HAI

COLOMBIA

ASOCIACION COLOMBIANA DE DERECHO Y ESTUDIOS MARITIMOS “ACOLDEMAR”

Carrera 7 No. 24-89 Oficina 1803 - P.O. Box 14590
Bogotá, D.C. Colombia, South America -
Tel. +57 1 241.0473/241.0475 - Fax: +57 1 241.0474
E-mail: presidencia@acoldemar.org

Established: 1980

Officers:

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(Maritime Law Association of Costa Rica)

Oficentro Torres del Campo, Edificio I, Segundo Nivel, San José, Costa Rica

Tel.: +506 257.2929 - Fax: +506 248.2021

*Established: 1981*Officers:*President:* Lic. Tomas Federico NASSAR PEREZ, Abogado y Notario Publico, Apartado Postal 784, 1000 San José.*Vice-President:* Licda. Roxana SALAS CAMBRONERO, Abogado y Notario Publico, Apartado Postal 1019, 1000 San José.*Secretary:* Lic. Luis Fernando CORONADO SALAZAR*Treasurer:* Lic. Mario HOUED VEGA*Vocal:* Lic. Jose Antonio MUNOZ FONSECA*Fiscal:* Lic. Carlos GOMEZ RODAS**CROATIA****HRVATSKO DRUŠTVO ZA POMORSKO PRAVO**

(Croatian Maritime Law Association)

c/o Rijeka College Faculty of Maritime Studies,
Studentska 2, 51000 RIJEKA, Croatia

Tel.: +385 51 338.411 - Fax: +385 51 336.755

E-mail: hdpp@pfri.hr - Website: <http://www.pfri.hr/hdpp>*Established: 1991*Officers:*President:* : Dr. sc. Petar KRAGIĆ, Legal Counsel of Tankerska plovidba d.d., B. Petranovića 4, 23000 Zadar. Tel. +385 23 202-261 - Fax: +385 23 250.501 - E-mail: petar.kragic@tankerska.hr*Vice-Presidents:*Prof. dr. sc. Dragan BOLANČA, Professor of Maritime Law at the University of Split Faculty of Law, Domovinskog rata 8, 21000 Split. Tel.: +385 21 393.518 - Fax: +385 21 393.597 - E-mail: dbolanca@pravst.hrProf. dr. sc. Aleksandar BRAVAR, Associate Professor of Maritime and Transport Law at the University of Zagreb Faculty of Law, Trg Maršala Tita 14, 10000 Zagreb. Tel.: +385 1 480-2417 - Fax: +385 1 480-2421 - E-mail: abravar@pravo.hrDr. sc. Vesna TOMLJENović, Assistant Professor of Private International Law at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359.684 - Fax: +385 51 359.593 - E-mail: vesnat@pravri.hr*Secretary General:* Mr. Igor VIO, LL.M., Lecturer at the University of Rijeka Faculty of Maritime Studies, Studentska 2, 51000 Rijeka. Tel. +385 51 338.411 - Fax: +385 51 336.755 - E-mail: vio@pfri.hr

Member Associations

Administrators:

Dr. sc.. Dora ČORIĆ, Assistant Professor of Maritime and Transport Law at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359-534 - Fax: +385 51 359-593 - E-mail: dcoric@pravri.hr

Mrs. Sandra DEBELJAK-RUKAVINA, LL.M., Research Assistant at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359.533 - Fax: +385 51 359.593 - E-mail: rukavina@pravri.hr

Treasurer: Mrs. Marija POSPIŠIL-MILER, LL.M., Legal Counsel of Lošinjaska plovidba-Brodarstvo d.d., Splitska 2, 51000 Rijeka. Tel.: +385 51 319.015 - Fax: +385 51 319.003 - E-mail: legal@losinjaska-plovidba.hr

Titulary Members:

Ivo GRABOVAC, Vinko HLAČA, Hrvoje KAČIĆ, Petar KRAGIĆ, Mrs. Ljerka MINTAS-HODAK, Drago PAVIĆ.

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DENMARK**DANSK SORETSFORENING**

(Danish Branch of Comité Maritime International)

c/o Kromann Reumert, Sundkrogs-gade 5, 2100 Copenhagen Ø.

Direct tel. +45 38 77 43 22 – Mobile: +45 40 62 08 74

E-mail: htj@kromannreumert.com

Established: 1899

Officers:

President: Mr Henrik THAL JANTZEN, Kromann Reumert, Sundkrogs-gade 5, 2100 Copenhagen Ø. – Tel. +45 38 77 43 22 – Mobile: +45 40 62 08 74 – E-mail: htj@kromannreumert.com

Members of the Board:

Ole SPIERMANN, Jonas Bruun, Bredgade 38, 1260 Copenhagen K, Denmark. Tel.: +45 33 47.88.00 – Fax: +45 33 47.88.88 – E-mail: osp@jblaw.dk

Dorte ROLFF, A.P. Møller – Mærsk A/S, Esplanaden 50, 1098 Copenhagen K, Denmark. Tel.: +45 33 63.33.63 – Fax: +45 33 63.41.08 – E-mail: cphcomp@maersk.com

Jes ANKER MIKKELSEN, Bech-Bruun Dragsted, Langelinie Allé 35, 2100 Copenhagen Ø, Denmark. Tel.: +45 72 27.00.00 – Fax: +45 72 27.00.27 – E-mail: jes.anker.mikkelsen@bechbruundragsted.com

Michael VILLADSEN, Advokathuset Rödstenen, Dalgas Avenue 42, 8000 Aarhus C, Denmark. Tel.: +45 86 12.19.99 – Fax: +45 86 12.19.25 – Email: mv@rodstenen.dk

Uffe LIND RASMUSSEN, Danish Shipowners' Association, Amaliegade 33, 1256 Copenhagen K, Denmark. Tel.: +45 33 11.40.88 – Fax: +45 33 11.62.10 – E-mail: ulr@danmarksrederiforening.dk

Member Associations

Peter ARNT NIELSEN, Copenhagen Business School, Legal Department, Howitzvej 13,
2000 Frederiksberg C, Denmark. Tel.: +45 38 15.26.44 – Fax: +45 38 15.26.10 –
E-mail: pan.jur@cbs.dk

Vibe ULFBECK, Copenhagen University, Studiestraede 6, 01-407, 1455 Copenhagen K
Peter Appel, Gorrissen Federspiel, H.C. Andersens Boulevard 12, 1553 Copenhagen V
Helle LEHMANN, Assuranceforeningen Skuld, Skt. Petri Passage 5, 3, 1165 Copenhagen K

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DOMINICAN REPUBLIC

ASOCIACION DOMINICANA DE DERECHO MARITIMO (AADM)

557 Arzobispo Portes Street, Torre Montty, 3rd Floor,
Ciudad Nueva, Santo Domingo, Dominican Republic

Tel.: 809-303-0225 & 809-815-1091 – AOH: 809-732-0938 (Home) – Fax: 809-688-1687

E-mail: georgembutler@hotmail.com & legalmarine@codetel.net.do

Established: 1997

Officers:

<i>President:</i>	Lic. George Montt BUTLER VIDAL
<i>Secretary:</i>	Lic. Marie Linnette GARCIA CAMPOS
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	Lic. Lluðelis ESPINAL DE OECKEL

Member Associations

ECUADOR**ASOCIACION ECUATORIANA DE ESTUDIOS Y DERECHO MARITIMO “ASEDMAR”**

(Ecuadorian Association of Maritime Studies and Law)
 Junin 105 and Malecón 6th Floor, Intercambio Bldg.,
 P.O.Box 3548, Guayaquil, Ecuador
 Tel.: +593 4 2560.100 - Fax: +593 4 2560.700

Established: 1993

Officers:

President: Dr. José Modesto APOLO TERÁN, Junin 105 y Malecón, Edif. Intercambio 6to Piso, Guayaquil, Ecuador. Tel.: 2560100 - E-mail: jmapolo@lawyers.ec

Vice President: Ab. Jaime MOLINARI LLONA, Av. 25 de Julio Km 2,5, Junto a las Bodegas de Almagro. Tel.: 2489402 - E-mail: ecuapandi@telconet.net

Principal Vocals:

Ab. Fernando ALARCÓN SÁENZ, Corp. Noboa El Oro 105 y la Ria. Tel.: 2442055 ext. 4167 - E-mail: falarcon@bonita.com

Ab. Publio FARFÁN VÉLEZ, Av. 9 de Octubre 416 y Chile Edific. City Bank, Consejo de la Marina Mercante 5to Piso. Tel.: 2560688/2561366 - E-mail: sectec@telconet.net

Ab. Pablo BURGOS CUENCA, DIGPER: Base Sur, Via Puerto Maritimo. Tel.: 2502259 - E-mail: pabloburgoscuenca@hotmail.com

Substitute Vocals:

Dr. Modesto Gerardo APOLO TERÁN, Córdova 810 y Victor Manuel Rendón Edific. Torres de la Merced 1er Piso Ofic. 2. Tel.: 2569479 - E-mail: mgapolo@interactive.net.ec

Ab. Victor Hugo VÉLEZ, Digmer: Elizalde y Malecón Esquina, Tel.: 2320400 ext 312 - E-mail: asesoria_juridica@digmer.org

Dr. Manuel RODRÍGUEZ DALGO, Av. Amazonas N24 196 y Cordero Edif. Flopec Piso 11. Tel.: (02) 2552100 - E-mail: legal@flopec.com.ec

Titulary Member

José MODESTO APOLO

FINLAND**SUOMEN MERIOIKEUSYHDISTYS
FINLANDS SJÖRÄTTSFÖRENING**

(Finnish Maritime Law Association)

Åbo Akademi University, Department of Law,
Gezeliusgatan 2, FI-20500 Åbo/Turku, Finland
Tel.: +358 2 215 4692 - Fax: +358 2 215 4699*Established: 1939*Officers:

President: Hannu HONKA, Åbo Akademi, Department of Law, Gezeliusgatan 2, FI-20500 Åbo. Tel.: +358 2 215 4129 - Fax: +358 2 215 4699. E-mail: hannu.honka@abo.fi
Vice-President: Mervi PYÖKÄRI, Yara Suomi, POB 900, FI-00181 Helsinki. Tel.: +358 10 215 2842 - Fax: +358 10 215 2126. E-mail: mervi.pyokari@yara.com
Secretary: Peter SANDHOLM, Åbo Hovrätt, Tavastgatan 11, FI-20500 Åbo. Tel.: +358 10 364 1100 - Fax: +358 10 364 1101 - E-mail: peter.sandholm@oikeus.fi

Members of the Board:

Jan AMINOFF, Advokatbyrå Aminoff & Weissenberg Oy Ab, Kaserngatan 44, FI-00130 Helsingfors. Tel.: +358 9 684 0477 - Fax: +358 9 6840 4740 - E-mail: jan.aminoff@jafaw.fi
 Lolan ERIKSSON, Kommunikationsministeriet, POB 31, FI-00023 Statsrådet. Tel. +358 9 160 02 - E-mail: lolan.eriksson@mintc.fi
 Henrik GAHMBERG, Advokatbyrå Gahmberg & Co Oy Ab, POB 79, FI-00131 Helsingfors. Tel.: +358 9 6869 8830 - Fax: +358 9 6869 8850 - E-mail: henrik.gahmberg@getco.fi
 Jan HANSES, Viking Line, POB 166, AX-22101 Mariehamn. Tel.: +358 18 27 000 - Fax: +358 18 169 44 - E-mail: jan.hanses@vikingline.fi
 Saila HIIRSALMI, Gard (Baltic) Oy Ab, Bulevardi 46, FI-00120 Helsinki. Tel.: +358 9 618 8380 - Fax: +358 9 612 1000 - E-mail: saila.hiirsalmi@gard.no
 Ilkka IITILÄINEN, Neste Shipping Oy, POB 95, FI-00095 NESTE OIL. Tel.: +358 10 45 811 - Fax: +358 10 458 6748 - E-mail: ilkka.iittilainen@nesteoil.com
 Ilkka KUUSNIEMI, Neptun Juridica Oy Ab, Keilaranta 9, FI-02150 Espoo. Tel.: +358 9 6962 6313 - Fax: +358 9 628 797 - E-mail: ilkka.kuusniemi@neptunjuridica.com
 Olli KYTÖ, Alandia-Bolagen, POB 121, AX-22101 Mariehamn. Tel.: +358 18 29 000 - Fax: +358 18 13 290 - E-mail: olli.kyto@alandia.com
 Niklas LANGENSKIÖLD, Advokatbyrå Castrén & Snellman, POB 233, FI-00131 Helsingfors. Tel.: +358 20 776 5476 - Fax: +358 20 776 1476 - E-mail: niklas.langenskiold@castrén.fi
 Antero PALAJA, Turun Hovioikeus, Hämeenkatu 11, FI-20500 Turku. Tel. +358 10 364 1100 - Fax: +358 10 364 1101 - E-mail: antero.palaja@oikeus.fi
 Matti TEMMES, Multicann Finland Oy, Satamakatu 9 A 13, FI-48100 Kotka. Tel.: +358 5 225 0918 - Fax: +358 5 225 0917 - E-mail: mtemmes.multicann@kolumbus.fi
 Peter WETTERSTEIN, Åbo Akademi, Department of Law, Gezeliusgatan 2, FI-20500 Åbo. Tel.: +358 2 215 4321 - Fax: +358 2 215 4699 - E-mail: peter.wetterstein@abo.fi

Titulary Member:

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Membership:

Private persons: 107 - Firms: 24

Member Associations

FRANCE**ASSOCIATION FRANCAISE DU DROIT MARITIME**

(French Maritime Law Association)

Correspondence to be addressed to

AFDM, 10, rue de Laborde - 75008 Paris

Tel.: +33 1 53.67.77.10 - Fax: +33 1 47.23.50.95

E-mail: facaff@club-internet.fr - website: www.afdm.asso.fr*Established: 1897*Officers:

Président: Me. Patrick SIMON, Avocat à la Cour, Villeneau Rohart Simon & Associés, 15 Place du Général Catroux, 75017 Paris. Tel.: +33 1 46.22.51.73 - Fax: +33 1 47.54.90.78 - E-mail: p.simon@villeneuve.com

Présidents Honoraires:

M. Pierre LATRON, Fédération Française des Sociétés d'Assurances, Direction des Assurances Transport, 26, boulevard Haussmann, 75311 Paris Cedex 09.

Tel.: +33 1 42.47.91.41 - Fax: +33 1 42.47.91.42

M.me Françoise MOUSSU-ODIER, Consultant Juridique, M.O. Conseil, 114, Rue du Bac, 75007 Paris. Tel./Fax: +33 1 42.22.23.21 - E-mail: f.odier@wanadoo.fr

Me. Jean-Serge ROHART, Avocat à la Cour de Paris, SCP Villeneau Rohart Simon & Associés, 15 Place du Général Catroux, 75017 Paris. Tel.: +33 1 46.22.51.73 - Fax: +33 1 47.66.06.37 - E-mail: js.rohart@villeneuve.com

Vice-présidents:

M. Philippe BOISSON, Conseiller Juridique, 67/71, Boulevard du Château, 92200 Neuilly sur Seine, France. Tel: +33 1 55.24.70.00 - Fax: +33 6 80.67.66.12 - Mobile: +33 6 80.67.66.12 - E-mail: philippe.boisson@bureauveritas.com – www.bureauveritas.com

M. Philippe DELEBECQUE, Professeur à l'Université de Paris I, Panthéon-Sorbonne 4, rue de la Paix, 75002 Paris. Tel.: +33 1 42.60.35.60 - Fax: +33 1 42.60.35.76 - E-mail: ph-delebecque@wanadoo.fr

Secrétaire Général: M.me Valérie CLEMENT-LAUNOY, Directrice Juridique, Seafrance, 1, avenue de Flandre, 75019 Paris. Tel. + 33 1 53.35.11.62 - Fax: +33 1 53.35.11.64 - E-mail: vclement@seafrance.fr

Secrétaires Généraux Adjoints:

M.me Laetitia JANBON, Avocat à la Cour, SCP L. Janbon, 1, rue Saint Firmin, 34000 Montpellier. Tel.: +33 4 67.66.07.95 - Fax. +33 4 67.66.39.09 - E-mail: laetitia.janbon@wanadoo.fr

Trésorier: M. Patrice REMBAUVILLE-NICOLLE, Avocat à la Cour, 4, rue de Castellane, 75008 Paris. Tel.: +33 1 42.66.34.00 - Fax: +33 1 42.66.35.00 - E-mail: patrice.rembauville.nicolle@rbm21.com

Membres du Comité de Direction

M.me Cécile BELLORD, Responsable juridique Armateurs de France, 75008 Paris. Tel. +33 1 53.89.5254/44 - Fax: +33 1 53.89.52.53.

M. Olivier CACHARD, Professeur agrégé de droit privé, Doyen de la Faculté Université De Nancy 2, 13, place Carnot - C.O. n° 26, 54035 Nancy Cedex. Tel.: +33 3 83.19.25.10 - Fax: +33 3 83.30.58.73 - E-mail: Olivier.Cachard@univ-nancy2.fr

M. Jean-Paul CHRISTOPHE, Expert maritime, Paris, 12, rue Ernest Tissot, 92210 Saint-Cloud. Tel.: +33 1 47.71.14.31 - Fax: +33 1 47.71.11.89 - E-mail: jp.christophe@wanadoo.fr

Member Associations

- M.me Isabelle CORBIER, Avocat à la Cour, 134, Bld Saint-Germain, 75006 Paris. Tel.: +33 1 43.26.15.25 - fax: +33 1 43.25.95.58 - E-mail: ic@isabellecorbier.com
- M.me Nathalie FRANCK, Avocat à la Cour, Gide Loyrette Nouelm, 26, cours Albert 1er, 75008 Paris. Tel.: +33 1 40.75.60.95 - Fax: +33 1 42.56.84.47
- M. Philippe GODIN, Avocat à la Cour, Bouloy Grellet & Godin, 69, rue de Richelieu, 75002 Paris. Tel.: +33 1 1 44.55.38.83 - Fax: +33 1 42.60.30.10
- M. Luc GRELLET, Avocat à la cour, Bouloy-Grellet & Godin, 69, rue de Richelieu, 75002 Paris. Tel.: +33 1 44.55.38.83 - Fax: +33 1 42.60.30.10 - E-mail: bg.g@avocaweb.tm.fr
- M. Gilles HELIGON, Directeur Sinistres Maritime Aviation, AXA Corporate Solutions, 4, rue Jules Lefebvre, 75426 Paris Cedex 09. Tel.: +33 1 56.92.90.99 - Fax: +33 1 56.92.86.80 - E-mail: gilles.heligon@axa-corporatesolutions.com
- M. Christian HUBNER, Conseiller juridique, Etablissement Marine, AXA Corporate Solutions, 2, rue Jules Lefebvre, 75426 Paris Cedex 09. Tel.: +33 1 56.92.95.48 - Fax: +33 1 56.92.88.90 - E-mail: christian.hubner@axa-corporatesolutions.com
- M. Olivier JAMBU-MERLIN, Avocat à la Cour, 6 rue Deurbroucq, 44000 Nantes. Tel.: +33 2 40.71.87.26 - Fax: +33 2 40.69.38.88
- Me. Frédérique LE BERRE, Avocat à la Cour, Le Berre Engelsen Witvoet, 44, avenue d'Iéna, 75116 Paris. Tel.: +33 1 53.67.84.84 - Fax: +33 1 47.20.49.70 - E-mail: f.leberre@lbew-avocats.fr
- M. Didier LE PRADO, Avocat aux Conseils, 8, Villa Bosquet, 75007 Paris. Tel.: +33 1 44.18.37.95 - Fax: +33 1 44.18.38.95 - E-mail: dlpavoc@wanadoo.fr
- Me. Bernard MARGUET, Avocat à la Cour, 13 Quai George V - BP 434 - 76057 Le Havre Cedex. Tel.: +33 2 35.42.09.06 - Fax: +33 2 35.22.92.95 - E-mail: marguetlecoz@nerim.fr
- M.me Pascale MESNIL, Juge, Président de Chambre Tribunal ce Commerce de Paris, 77, rue des Beaux Lieux, 95550 Bessancourt. Tel/Fax: +33 1 39.60.10.94 - E-mail: pmesniltcp@tiscal.fr
- M. Martin NDENDE, Professeur des universités-Directeur adjoint du Centre de Droit Maritime et Océanique, Université De Nantes, Chemin de la Censive-du-Tertre, BP 81307, 44313 Nantes Cedex 03. Tel.: +33 2 40.14.15.87 - E-mail: martin.ndende@droit.univ-nantes.fr
- M. Thierry PETEL, Avocat à la Cour, SCP Scheuber Jeannin Petel, 91, rue Saint-Lazare, 75009 Paris. Tel.: +33 1 42.85.43.35 - Fax: +33 1 42.85.43.60 - E-mail: info@sjpshiplaw.com
- M. Olivier RAISON, Avocat à la Cour, Raison & Raison-Rebufat, 6 Cours Pierre Puger, 13006 Marseille. Tel.: +33 4 91.54.09.78 - Fax: +33 4 91.33.13.33 - E-mail: oraison@raison-avocats.com
- M.me Nathalie SOISSON, Coordination Sécurité Transport Groupe, TOTAL, 2, Place de la Coupole, La Défense 6, 92078 Paris La Defense. Tel.: + 33 1 47.44.68.43 - Fax: +33 1 47.44.75.13 - E-mail: nathalie.soisson@total.com
- M. Antoine VIALARD, Professeur émérite de l'Université Montesquieu - Bordeaux IV, 20, Hameau de Russac, 33400 Talence. Tel.: +33 5 24.60.67.72

Titulary Members:

Mme Pascale ALLAIRE-BOURGIN, M. Philippe BOISSON, Professeur Pierre BONASSIES, Me Emmanuel FONTAINE, Me Philippe GODIN, Me Luc GRELLET, M. Pierre LATRON, Mme Françoise MOUSSU-ODIER, M. Roger PARENTHOU, M. André PIERRON, Me Patrice REMBAUVILLE-NICOLLE, Mme Martine REMOND-GOUILLOUD, Me Henri de RICHEMONT, Me Jean-Serge ROHART, Me Patrick SIMON, Professeur Yves TASSEL, Me Alain TINAYRE, Professeur Antoine VIALARD

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Member Associations

GERMANY**DEUTSCHER VEREIN FÜR INTERNATIONALES SEERECHT**

(German Maritime Law Association)

Esplanade 6, 20354 Hamburg

Tel.: +49 40 350.97219 - Fax: +49 40 350.97211

E-mail: heitmann@reederverband.de

*Established: 1898*Officers:*President:* Dr. Dieter SCHWAMPE, Dabelstein & Passehl, Große Elbstr. 86, 22767 Hamburg.

Tel.: +49 (40) 3177970 – Fax: +49 (40) 31779777 – E-mail: d.schwampe@da-pa.com

Vice-President: Dr. Bernd KRÖGER, Möörkenweg 39a, 21029 Hamburg.

Tel. +49 40 7242916 – Fax: +49 40 30330933 – E-mail: b.kroeger@cntmail.de

Secretary: Dr. Jan-Thiess HEITMANN, Verband Deutscher Reeder, Esplanade 6, 20354

Hamburg. Tel. +49 40 35097219 – Fax: +49 40 35097211 –

E-mail: heitmann@reederverband.de

Members:Dr. Sven GERHARD, Global Office Marine, Allianz Global Corporate & Specialty,
Burchardstr. 8, 20095 Hamburg. Tel.: +49 (40) 36172905 - Fax: +49 (40) 36173048 -

E-mail: sven.gerhard@ma.allianz.com

Rolf-Jürgen HERMES, PANDI SERVICES, J. & K. Brons GmbH, Otto-Lilienthal-Str. 29,

28199 Bremen. Tel.: +49 (421) 308870 – Fax: +49 (421) 3088732 – E-mail:

hermesr@pandi.de

Prof. Dr. Doris KÖNIG, Bucerus Law School, Jungiusstr. 6, 20355 Hamburg. Tel.: +49 (40)

30706190 – Fax: +49 (40) 30706195 – E-mail: doris.koenig@law-school.de

Dr. Hans-Heinrich NÖLL, Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg.

Tel.: +49 40 35097227 – Fax: +49 40 35097211 – E-mail: noell@reederverband.de

Dr. Inga SCHMIDT-SYASSEN, Pikartenkamp 44, 22587 Hamburg. Tel.: +49 (40) 863113 –

Fax: +49 (40) 86608313 – E-mail: inga.schmidt-syassen@gmx.de

Dr. Klaus RAMMING, Lebuhn & Puchta, Vorsetzen 35, 20459 Hamburg. Tel.: +49 (40)

3747780 – Fax: +49 (40) 364650 – E-mail: klaus.rammimg@lebuhn.de

Titulary Members:

Hartmut von BREVERN, Prof. Dr. Rolf HERBER, Dr. Bernd KRÖGER, Dr. Dieter RABE,

Dr. Klaus RAMMING, Dr. Thomas M. REME?.

Membership:

GREECE

GREEK MARITIME LAW ASSOCIATION

(Association Hellenique de Droit Maritime)

Dr. A. Antapassis, 10 Akti Poseidonos, 185 31 Piraeus

Tel.: +30 210 422.5181 - Fax: +30 210 422.3449

E-mail: antalblaw@ath.forthnet.gr

Established : 1911

Officers:

President: Dr. Antoine ANTAPASSIS, Professor at the University of Athens, Advocate, 10 Akti Poseidonos, 185 31 Piraeus. Tel.: +30 210 422.5181 - Fax: +30 210 422.3449 - E-mail: antalblaw@ath.forthnet.gr

Vice-Presidents:

Dr. Lia ATHANASSIOY, As. Professor at the University of Athens, Advocate, 4 Dimokritou Street, 106 71, Athens. Tel: +30 210 363.6011 - Fax: +30 210 363.6206 - E-mail: liath@ag-law.gr

Dr. Grigorios TIMAGENIS, Advocate, 57 Notara Sreet, 18535 Piraeus. Tel.: +30 210 422.0001 - Fax +30 210 422.1388 - E-mail: secretariat@timagenislaw.com

Secretary-General: Nikolaos GERASSIMOY, Advocate, 14 Mavrokordatou Street, 18538 Piraeus. Tel.: +30 210 428.5722-4 - Fax: +30 210 428.5659 - E-mail: info@gerassimou.gr

Deputy Secretary-General: Deukalion REDIADES, Advocate, 41 Akti Miaouli, 185 36, Piraeus. Tel.: +30 210 429.4900/429.3880/429.2770 - Fax: +30 210 429.4941 - E-mail: dr@rediadis.gr

Special Secretaries:

Ioannis MARKIANOS-DANIOLOS, Advocate, 29 I. Drosopoulou, 112 57 Athens. Tel.: +30 210 822.6801 - Fax: +30 210 822.3242 - E-mail: jmarkianos@kgdi.gr

Georgios TSAKONAS, Advocate, 35-39 Akti Miaouli, 185 35, Piraeus. Tel: +30 210 429.2380, +30 210 429.2311 - Fax: +30 210 429.2462

Treasurer:

Stelios STYLIANOY, Advocate, Platonos 12, 185 35 Piraeus. Tel.: +30 210 413.0545 – Fax: +30 210 417.1922 – E-mail: twostyls@ath.forthnet.gr

Members:

Dr. Dimitrios CHRISTODOULOU, Lecturer at the University of Athens, Advocate, 5 Pindarou Street, 106 71, Athens. Tel.: +30 210 363.6336 - Fax: +30 210 363.6934 - E-mail: dchristodoulou@eplaw.gr

Ioannis HAMILOTHORIS, Judge, 22b S. Tsakona Street, Palia Penteli, 152 36 Athens. Tel.: +30 210 8041591 - E-mail: jchamilothoris@gmail.com

Anastasia KAMINARI, Advocate, 20 Koritsas Street, 151 27 Melissia. Tel.: +30 210 628.2817 - Fax: +30 210 628.2822 - E-mail: legaldept@setegen.gr

Polichronis PERIVOLARIS, Advocate, 20 Mpoumpoulinas Street, 185 35, Piraeus. Tel.: +30 210 410.1151 - Fax: +30 210 410.1152 - E-mail: chper@otenet.gr

Georgios SIAMOS, 3A Artemissiou Street, 166 75 Glyfada, Tel.: +30 210 890.7821 - Fax: +30 210 894.6657 - E-mail: qms@ancora.gr

Georgios SKORINIS, Advocate, 67 Hiroon Polytechniou, 185 36 Piraeus. Tel.: +30 210 452.5848-9 - Fax: +30 210 418.1822 - E-mail: mail@scorinis.gr

Vassilios VERNIKOS, Advocate, 99 Kolokotroni Street, 185 35, Piraeus. Tel.: +30 210 417.5072 - Fax: +30 210 413.0243 - E-mail: verlegal@otenet.gr

Titulary Members:

Christos ACHIS, Constantinos ANDREOPOULOS, Anthony ANTAPASSIS, Paul AVRAMEAS, Aliki KIANTOU-PAMPOUKI, Panayiotis MAVROYIANNIS, Ioannis ROKAS, Nicolaos SKORINIS.

Member Associations

GUATEMALA**COMITE GUATEMALTECO DE DERECHO MARITIMO
Y PORTUARIO**

(The Maritime Law Association of Guatemala)
22 avenida 0-26 zona 15, Vista Hermosa II, Ciudad de Guatemala,
Guatemala, Centro America
Tel.: +502 3691037 - E-mail: jmarti@guate.net

Officers:

President: Mr. José Eduardo MARTI BAEZ

HONG KONG, CHINA

HONG KONG MARITIME LAW ASSOCIATION
c/o 5605-07 The Center, 99 Queen's Road Central, Hong Kong
Tel.: (852) 2537.8628 – Dir.: (852) 3528.8371 – Fax: (852) 2521.9072
E-mail: pmills@blankrome.com

Established: 1978 (re-established: 1998)

Executive Committee Members:

The Hon. Reyes J., Chairman, E-mail: anselmofreyes@judiciary.gov.hk
Jon Zinke, Vice Chairman, E-mail: jzinke@kyl.com.hk
Peter Mills, Secretary, E-mail: pmills@blankrome.com
Phillip Yang, E-mail: philipyang@biznetvigator.com
Felix Chan, E-mail: fwhchan@hku.hk
S.S. Tse, E-mail: SSTSE@groupama-transport.com
Raymond Wong, E-mail: raymond.wong@ctcplc.com
Colin Wright, E-mail: colin@wrightcounsel.com
Nigel Binnersley, E-mail: nbinnersley@blankrome.com
Steven Wise, E-mail: steven.wise@hfw.com
Andrew Horton, E-mail: ahorton@blg.com.hk
Christian Ott, E-mail: christian.ott@skuld.com

Members 2007/2008:

Total Membership: 125 (Corporate: 83 / Individual: 37; Overseas: 3; Student: 2 [as at 15 January 2008])

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Academic: 6; Arbitrators/Insurance/Claims Services: 14; Legal profession: 69; Shipping industry/Port Operations: 32; Student: 2; Others: 2.

IRELAND

IRISH MARITIME LAW ASSOCIATION

All correspondence to be addressed to the Hon. Secretary:
 Edmund SWEETMAN, BL, Law Library, Four Courts, Dublin 7,
 Tel: +353 45 869.192 – Fax: +353 1 633.5078,
 E-mail: esweetman@icasf.net

Established: 1963

Officers:

President: Helen NOBLE, Matheson Ormsby Prentice, Solicitors, 70 Sir John Rogerson's Quay, Dublin 2. Tel: +353 1 232.2535 –E-mail: helen.noble@mop.ie

Vice-President: Paul GILL, Dillon Eustace, Solicitors, 33 Sir John Rogerson's Quay, Dublin 2. Tel.: +353 1 667.0022 - Fax: +353 1 667.0042 - E-mail: paul.gill@dilloneustace.ie

Hon. Secretary: Edmund SWEETMAN, BL, Law Library, Four Courts, Dublin 7, Tel: +353 45 869.192 – Fax: +353 1 633.5078, E-mail: sweetman@icass.net

Hon. Treasurer: Niamh LOUGHRAN, Dillon Eustace, Solicitors, 33 Sir John Rogerson's Quay, Dublin 2. Tel.: +353 1 667.0022 - E-mail: Niamh.loughran@dilloneustace.ie

Committee Members:

John Wilde CROSBIE, BL, Law Library, Four Courts, Dublin 7.

Tel +353 1 872.0777 – Fax: +353 1 872.0749 – E-mail: crosbee@eircom.net

Hugh KENNEDY, Lavelle Coleman, 51-52 Fitzwilliam Square, Dublin 2.

Tel: +353 1 644.5800 – Fax: +353 1 661.4581 – E-mail: hkennedy@lavellecomeman.ie

Bill HOLOHAN, Holohan Solicitors, Suite 319, The Capel Building, St. Marys Abbey, Dublin 7, Ireland. Tel: +353 01 8727120 – Fax: +353 021 4300911 – E-mail: reception@billholohan.ie

Eamonn MAGEE, BL, Marine Insurance Consultant, 17 Elton Court, Sandycove, Co. Dublin. Tel:- +353 1 2303846 – E-mail: mageeeamonn@gmail.com

Cian O'CATHAIN, Vincent & Beatty, Solicitors, 67/68 Fitzwilliam Square, Dublin 2.

Tel: +353 1 676.3721 – Fax: +353 1 678.5317 – Email: vinbea@securemail.ie

Vincent POWER, A&L Goodbody, Solicitors, IFSC, North Wall Quay, Dublin 1.

Tel: +353 1 649.2000 – Fax: +353 1 649.2649 – E-mail: vpower@algoodbody.ie

Adrian TEGGIN, Arklow Shipping Limited, North Quay, Arklow, Co. Wicklow.

Tel: +353 402 399.01 – E-mail: chartering@asl.ie

The Hon. Mr. Justice Brian McGOVERN, J., Four Courts, Dublin 7.

E-mail: bmc-gov@gmail.com

Sean KELLEHER, Irish Dairy Board, Grattan House, Lower Mount Street, Dublin 2.

Tel: +353 1 661.9599 – E-mail: skelleher@idb.ie

Colm O'HOISIN, S.C., P.O. Box 4460, Law Library Buildings, 158/159 Church Street, Dublin 7. Tel.: +353 1 817.5088 – E-mail: cohoisin@indigo.ie

Titulary Members:

Paul GILL, Bill HOLOHAN, Sean KELLEHER, Eamonn MAGEE, Her Hon. Judge Petria McDONNELL, The Hon. Mr. Justice Brian McGOVERN, J. Niall McGOVERN, Helen NOBLE, Colm O'HOISIN.

Member Associations

Individual members: 41
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ITALY

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO

(Italian Maritime Law Association)

Via Roma 10 - 16121 Genova

Tel.: +39 010 586441 - Fax: +39 010 594805

E-mail: presidenza@aidim.org - Website: www.aidim.org

Established: 1899

President ad honorem: Francesco BERLINGIERI, Via Roma 10, 16121 Genova.
 Tel.: +39 010 586441 - Fax: +39 010 594805 - E-mail: slb@dirmar.it

Officers:

President: Giorgio BERLINGIERI, Via Roma 10, 16121 Genova. Tel.: +39 010 586441 -
 Fax: +39 010 594805 - E-mail: presidenza@aidim.org

Vice-Presidents:

Sergio M. CARBONE, Via Assarotti 20, 16122 Genova. Tel.: +39 010 885242 -

Fax: +39 010 8314830 - E-mail: carbone@stcarbone.it

Stefano ZUNARELLI, Via del Monte 10, 40126 Bologna. Tel.: +39 051 7457221 -

Fax: +39 051 7457222 - E-mail: stefano.zunarelli@studiozunarelli.com

Secretary General: Giuseppe DUCA, S. Croce, 266, 30135 Venezia - Tel.: +39 041 711017

Fax: +39 041 795473 - E-mail: segretario@aidim.org

Treasurer: Emilio PIOMBINO, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: +39 010 562623 -

Fax: +39 010 587259 - E-mail: epiombino@studiocavallo.it

Councillors:

Alberto BATINI, Via di Franco 9, 57100 Livorno. Tel. +39 0586 883232 -

Fax: +39 0586 884233 - E-mail: alberto.batini@studiolegalebatini.com

Angelo BOGLIONE, Via G. D'Annunzio, 2/50, 16121 Genova. Tel. 010-5704951 -

Fax: 010-5704955 - E-mail: info@boglione.eu

Sergio LA CHINA, Via Roma 5, 16121 Genova. Tel.: +39 010 541588 -

Fax: +39 010 592851 - E-mail: sergiolachina@tin.it

Marcello MARESCA, Via Bacigalupo 4/13, 16122 Genova. Tel.: +39 010 877130 -

Fax: +39 010 881529 - E-mail: m.maresca@studiomaresca.it

Massimo MORDIGLIA, Via XX Settembre, 14/17, 16121 Genova. Tel. +39 010-586841 -

Fax: +39 010-532729 - E-mail: Massimo.Mordiglia@mordiglia.it

Francesco SICCARDI, Via XX Settembre 37, 16121 Genova, Italy. Tel.: +39 010 543951 -

Fax: +39 010 564614 - E-mail: f.siccardi@siccardibregante.it

Sergio TURCI, Via Ceccardi 4/30, 16121 Genova. Tel.: +39 010 5535250 -

Fax: +39 010 5705414 - E-mail: turcilex@turcilex.it

Elda TURCO BULGHERINI, Viale G. Rossini 9, 00198 Roma. Tel.: +39 06 8088244 -

Fax: +39 06 8088980 - E-mail: studioturco@tiscalinet.it

Enzio VOLLI, Via San Nicolò 30, 34100 Trieste. Tel.: +39 040 638384 -

Fax: +39 040 360263 - E-mail: info@studiovolli.it

Member Associations

Honorary Members:

Antonino DIMUNDO, Måns JACOBSSON, Domenico MALTESE, Raimondo POLLASTRINI, Enzo VOLLI

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Membership:

259

JAPAN**THE JAPANESE MARITIME LAW ASSOCIATION**

3rd Fl., Kaiji Center Bldg., 4-5 Kojimachi, Chiyoda-ku, Tokyo 102-0083, Japan

Tel.: +81 3 3265.0770 - Fax: +81 3 3265.0873

E-mail: secretariat@jmla.jp

Established: 1901

Officers:

President: Tsuneo OHTORI, Professor Emeritus at the University of Tokyo, 6-2-9-503, Hongo, Bunkyo-ku, Tokyo 113-0033, Japan.

Vice-Presidents:

Sumio SHIOTA, Chairman of a Airport Environment Improvement Foundation, 2-1-1 Uchisaiwai-cho Chiyoda-ku, Tokyo 100-0011.

Takao KUSAKARI, President of Nippon Yusen Kaisha, c/o N.Y.K., 2-3-2 Marunouchi, Chiyoda-ku, Tokyo 100-0005.

Hachiro TOMOKUNI, Counselor of Mitsui O.S.K. Lines Ltd., c/o M.O.L., 2-1-1 Toranomon, Minato-ku, Tokyo 105-8685.

Hisashi TANIKAWA, Professor Emeritus at Seikei University, 4-15-33-308, Shimorenjaku 4-chome, Mitaka-City, Tokyo 181-0013.

Seiichi OCHIAI, Professor of Law at the University of Tokyo, 6-5-2-302 Nishi-shinjyuku, Shinjyuku-ku, Tokyo 160-0023.

Kenjiro EGASHIRA, Professor of Law at the University of Tokyo, 3-25-17, Sengencho 3-chome, Higashi-Kurume, Tokyo 203-0012

Secretary General: Noburo KOBAYASHI, Professor of Law at Seikei University, 58-306 Yamashita-Cho, Naka-ku, Yokohama-Shi, 231-0023, Japan. Tel./Fax: (45)781.0727 – Email: kobayashi@law.seikei.ac.jp.

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REPUBLIC OF KOREA

KOREA MARITIME LAW ASSOCIATION

Room # 1002, Boseung Bldg., Euljiro 2-ga, Jung-Gu, Seoul 100-192, Korea

Tel.: +82 2 754.9655 - Fax: +82 2 752.9582

E-mail: kormla@kormla.or.kr - Website: <http://www.kormla.or.kr>

Established: 1978

Officers:

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DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

MARITIME LAW ASSOCIATION, DPR KOREA

P.O.Box 28 no.103, Haeun Building, Tonghung-Dong,
Central-District Pyongyang, DPR Korea

Tel.: 00850-2-18111 ext 8818 – Fax: 850-2 3814567 – E-mail: kmaclaw@silibank.net.kp

Established: 1989

Officers:

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Vice-President: CHOE CHOL HO, Vice-president of Ocean Maritime Management Co., Ltd.

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Individual Members: 142

MALTA

MALTA MARITIME LAW ASSOCIATION

Maritime Trade Centre, Xatt l-Ghassara tal-Gheneb, Marsa, MRS 1917 Malta

Tel.: +356 27250320, +356 21250320 - Fax: +356 21250320

E-mail: mlac1@onvol.net - Website: www.mmla.org.mt

Established: 1994

Officers:

President: Dr. Ann FENECH, Fenech & Fenech Advocates, 198 Old Bakery Street, Valletta VLT 1455, Malta - Tel.: +356 21 241232 - Fax: +356 25 990644 - E-mail: ann.fenech@fenlex.com

Vice-Presidents:

Dr. Ivan VELLA, Level 12, Portomaso Business Tower, St. Julians PTM 01, Malta. Tel.: +356 21 388344 – Fax: +356 21 388347 – E-mail: iv@advocate-vella.com

Ms. Miriam CAMILLERI, MC Consult, Mayflower Court, Fl 8, Triq San Lwigi, Msida, MSD 1382, Tel.: +356 21 371411 – 27 371411 – Fax: +356 23 331115 – E-mail: miriam@waldonet.net.mt

Member Associations

Secretary: Dr. Daniel AQUILINA, Ganado & Associates, 171 Old Bakery Street, Valletta VLT 1455, Malta. Tel.: +356 21 235406 – Fax: +356 21 225908 –
E-mail: daquilina@jmganado.com

Treasurer: Dr. Nicholas VALENZIA, MamoTCV Advocates, 90, Palazzo Pietro Stiges, Strait Street, Valletta, VLT 1436. Tel: +356 21 231345 – Fax +356 21 244291 – E-mail: nicholas.valenzia@mamotcv.com

Executive Committee Members:

Dr. Vanessa BRINCAT-ROSSIGNAUD, KPMG, Portico Building, Marina Street, Pieta' PTA 9044. Tel.: +356 25 631000 – Fax: +356 25 661132 –
E-mail: vbrinatrossignaud@kpmg.com.mt

Dr. Anthony GALEA, Deguara Farrugia Advocates, Il-Pjazetta A, Suite 41, Tower Road, Sliema, SLM 1607 - Tel.: +356 21 340401 – E-mail: anthony.galea@dfadvocates.com

Capt. Reuben LANFRANCO, MCAST Maritime Institute, Villa Portelli, Marina Street, Kalkara, KKR 1524 - Tel.: +356 23 989206 – Fax: +356 21 809057 –
E-mail: reuben.lanfranco@mcast.edu.mt

Dr. Jotham SCERRI-DIACONO, Ganado & Associates, 171, Old Bakery Street, Valletta VLT 1455 - Tel.: +356 21 235406 – Fax +356 21 225908 –
E-mail: jsdiacono@jmganado.com

Dr. Suzanne SHAW, Dingli & Dingli Law Firm, 18/2, South Street, Valletta VLT 1102, Malta. Tel.: +356 21 236206 – Fax: +356 21 225908 – E-mail: suzanne@dingli.com.mt

Dr. David TONNA, MamoTCV Advocates, 90, Palazzo Pietro Stiges, Strait Street, Valletta, VLT 1436. Tel.: +356 21 231345 – Fax +356 21 244291 –
E-mail: david.tonna@mamotcv.com

Dr. Alison VASSALLO, Fenech & Fenech Advocates, 198 Old Bakery Street, Valletta, VLT 1455. Tel.: +356 21 241232 – Fax: +356 25 990644 –
E-mail: alison.vassallo@fenlex.com

MEXICO

ASOCIACION MEXICANA DE DERECHO MARITIMO, A.C.

(Mexican Maritime Law Association)

Rio Hudson no. 8, Colonia Cuauhtémoc, Delegacion Cuauhtémoc,
C.P. 06500, México D.F.

Tel.: +52 55 5211.2902/5211.5805 - Fax: +52 55 5520.7165

E-mail: bernardo@melo-melo.com.mx - Website: www.amdm.sytes.net

Established: 1961

Officers:

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Dr. Ignacio L. MELO Jr.

MOROCCO**ASSOCIATION MAROCAINE DE DROIT MARITIME**

(Moroccan Association of Maritime Law)

Espace Paquet n° 501 - Place Nicolas Paquet, Boulevard Mohamed V
Casablanca, Morocco

Tel.: +212 2245.2525 - Fax: +212 2245.0501

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NETHERLANDS**NEDERLANDSE VERENIGING VOOR ZEE- EN
VERVOERSRECHT**

(Netherlands Maritime and Transport Law Association)

Postbus 633, 1000 AP Amsterdam.

Tel.: +31 20 524.5245 – Fax: +31 20 524.5250

E-mail: vancampen@wvcv.nl – Website: www.nvzv.nl*Established: 1905*Officers:*President:* Mr T. VAN DER VALK, AKD Prinsen Van Wijmen, P.O. Box 4302, 3006 AH
Rotterdam. Tel.: +31 88 253.5404 – Fax: +31 88 253.5430 – E-mail: tvandervalk@akd.nl*Secretary:* Mr. R.P. VAN CAMPEN, Wiersma Van Campen Vos, Postbus 633, 1000 AP
Amsterdam. Tel.: +31 20 524.5245 – Fax: +31 20 524.5250 – E-mail:
vancampen@wvcv.nl

Member Associations

Treasurer: Mr. J. POST, Oostmaaslaan 760, 3063 DK Rotterdam. Tel.: +31 10 242.9977 – Fax: +31 10 242.9996 – E-mail: jack.post@post-co.com
 Mr T. ROOS, Van Dam & Kruidenier, Postbus 4043, 3006 AA Rotterdam. Tel.: +31 10 288.8800 – Fax: +31 10 288.8828 – E-mail: roos@damkru.nl

Members:

Mr E.J.L. BULTHUIS, p/a Van der Steenhoven Advocaten, Herengracht 582-584, 1017 CJ Amsterdam. Tel.: +31 20 607.7979 – Fax: +31 20 683.1947 – E-mail: bulthuis@vandersteenhoven.nl
 Prof. Mr. M.H. CLARINGBOULD, Van Traa Advocaten, Postbus 21390, 3001 AJ Rotterdam. Tel.: +31 10 413.7000 – Fax: +31 10 414.5719 – E-mail: claringbould@vantraa.nl
 Mr J.J. CROON, Transavia Airlines C.V., Postbus 7777, 1118 ZM Schiphol. Tel.: +31 20 604.6397 – Fax: +31 20 648.4533 – E-mail: croon@transavia.nl
 Mr J.M. VAN DER KLOOSTER, Gerechtshof 's-Gravenhage, Postbus 20302, 2500 EH's-Gravenhage. Tel. +31 70 381.1362 – Fax: +31 70 381.3256 – E-mail: h.van.der.klooster@rechtspraak.nl
 Mr A.O.E. KNEEFEL, Verbond van Verzekeraars, Postbus 93450, 2509 AL's-Gravenhage. Tel.: +31 55 579.5220 – Fax: +31 55 579.2162 – E-mail: arno.kneefel@achmea.nl
 Mr J.G. TER MEER, Boekel de Nerée, Postbus 75510, 1070 AM Amsterdam. Tel.: +31 20 795.3953 – Fax: +31 20 795.3900 – E-mail: jg.termeer@bdn.nl
 Mr A.J. NOORDERMEER, RaboBank Shipping, Postbus 10017, 3004 AA, Rotterdam. Tel. +31 10 400.3961 – Fax: +31 10 400.3730 – E-mail: a.j.noordermeer@rotterdam.rabobank.nl
 Mrs Mr H.A. REUMKENS, Ministerie van Verkeer en Waterstaat, Postbus 20906, 2500 EX's-Gravenhage. Tel.: +31 70 351.1800 – Fax: +31 70 351.8504 – E-mail: henny.reumkens@minvenw.nl
 Mr P.J.M. RUYTER, EVO, Postbus 350, 2700 AV Zoetermeer. Tel.: +31 79 346.7244 – Fax: +31 79 346.7888 – E-mail: p.ruyter@evo.nl
 Mr P.L. SOETEMAN, p/a Marsh B.V., Postbus 232, 3000 AE Rotterdam. Tel: +31 10 406.0489 – Fax: +31 10 406.0481 – E-mail: paul.soeteman@marsh.com
 Mevr. Mr S.STIBBE, p/a Stichting Vervoer Adres, Postbus 24023, 2490 AA Den Haag. Tel.: +31 88 5522 167 – Fax: +31 88 5522.103 – E-mail: sstibbe@beurtvaartadres.nl
 Mr T.P. TAMMES, KVNVR, Postbus 2442, 3000 CK Rotterdam. Tel.: +31 10 414.6001 – Fax: +31 10 233.0081 – E-mail: tammes@kvnvr.nl
 Mrs Mr W. VAN DER VELDE, Ministerie van Justitie, Postbus 20301, 2500 EH's-Gravenhage. Tel. +31 70 370.6591 – Fax: +31 70 370.7932 – E-mail: w.van.der.velde@minjus.nl
 Mr A.N. VAN ZELM VAN ELDIK, (Rechtbank Rotterdam), Statenlaan 29, 3051 HK Rotterdam, Tel.: +31 10 422.5755 – E-mail: anvanzelm@hotmail.com
 Mr F.J.W. VAN ZOELLEN, Havenbedrijf Rotterdam N.V., Postbus 6622, 3002 AP Rotterdam. Tel. +31 10 252.1495 – Fax: +31 10 252.1936 – E-mail: f.van.zoelen@portofrotterdam.com

Titulary Members:

Jhr. Mr V.M. de BRAUW, Mr R.E. JAPIKSE, Mr T. VAN DER VALK, Prof. Mr G.J. VAN DER ZIEL

NETHERLANDS ANTILLES

COMITE FOR MARITIME LAW, NETHERLANDS ANTILLES

Kaya W.F.G. Mensing 27, Curacao, Netherlands Antilles

Tel.: +599 9 465.7777 - Fax: +599 9 465.7666

E-mail: z&g@na-law.com

Officers:

President: Erich W.H. ZIELINSKI, Zielinski & Gorsira Law Offices, Kaya W.F.G. Mensing 27, P.O. Box 4920, Curacao, Netherlands Antilles. Tel: +599 9 465.7777 - Fax: +599 9 465.7666 - E-mail: z&g@na-law.com

Vice-President: Captain Richard E. BRITT, Century Maritime Services N.V., Kaya W. F.G. Mensing 27, P.O.Box 4920, Curaçao. Netherlands Antilles. Tel: +599 9 465.7777 - Fax: +599 9 465.7666 - Email: maritime@na-law.com

Secretary: Lex C.A. GONZALEZ, P.O. Box 6058, Curaçao. Netherlands Antilles. Tel./Fax: +599 9 888.0872. - Mobile: +599 9 563.8290 - Email: geminibls@cura.net

Treasurer: Gerrit L. VAN GIFFEN, Van Giffen Law Offices, A. de Veerstraat 4, Curacao. Netherlands Antilles, Tel +599 9 465.6060 & 465.0344 - Fax +599 9 465.6678 - Email: vgiffen@giflaw.com

Members:

Jos Dijk IMB-RIZLAB, International Dokweg 19 Curacao, Netherlands Antilles. Tel: +599 9 737.3586 - Fax: +599 9 737.0743.

Mr. Freeke F. KUNST, Promes Trenite & Van Doorne Law Offices, Julianaplein 22, P.O. Box 504, Curacao, Netherlands Antilles. Tel: +599 9 461.3400 - Fax: +599 9 461.2023.

Ir. L. ABARCA, Tebodin Antilles N.V., Mgr. Kieckensweg 9, P.O. Box 2085, Curacao, Netherlands Antilles. Tel: +599 9 461.1766 - Fax: +599 9 461.3506.

Karel ASTER, Curacao Port Services N.V., Rijkseenheidboulevard z/n, P.O. Box 170, Curacao, Netherlands Antilles. Tel: +599 9 461.5079, Fax: +599 9 461.3732.

Teun NEDERLOF, Seatrade Reefer Chartering (Curacao) N.V., Kaya Flamboyan 11, P.O. Box 4918, Curacao, Netherlands Antilles. Tel.: +599 9 737.0386 - Fax: +599 9 737.1842.

Hensley BEAUJON, Kroonvlag (Curacao) N.V., Maduro Plaza z/n, P.O. Box 3224, Curacao, Netherlands Antilles. Tel: +599 9 733.1500 - Fax: +599 9 733.1538.

Member Associations

NIGERIA

NIGERIAN MARITIME LAW ASSOCIATION

18B Oba Elegushi/Club Road, Ikoyi, Lagos, Nigeria

Tel.: +234(0)7029110631

E-mail: nmla@nmlaonline.com

Established: 1980

Officers:

President: Louis Nnamdi MBANEFO, Senior Advocate of Nigeria, 230 Awolowo Road Ikoyi, Lagos, Nigeria. Tel:+234 1 2694085 – Email: info@mbanefolaw.com

First Vice President: Chief M. A. AJOMALE, Bola Ajomale & Co., 4, Campbell Street, Lagos, Nigeria. Tel.: +234 1 7755912 – E-mail: bajomale@aol.com

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Honorary Secretary: Mrs Funke AGBOR, c/o ACAS, 9th Floor, St. Nicholas House, Catholic Mission Street, Lagos, Nigeria. Tel.: +234 1 4622094/4622480/2631960 – E-mail: fagbor@acas-law.com

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Financial Secretary: Mrs. Oritsematosan EDODO-EMORE, Edodo, Thorpe & Associates, 270 Lamlat House Ikorodu Road, Lagos, Nigeria. Tel: +234 0 8082789913 – Email: oritsematosan2002@yahoo.com

Publicity Secretary: Emeka AKABOGU, Akabogu & Associates, 2nd Floor, West Wing Tapa House, 3/5 Imam Dauda Street, Surulere, Lagos, Nigeria. Tel: +234 1 7905831 – Email: eakabogu@yahoo.com

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Avdeling av Comité Maritime International
 (Norwegian Maritime Law Association)
 c/o Nordisk Institutt for Sjørett, UiO, Karl Johans gt. 47
 P.O. Box 6706 St. Olavs Plass, 0130 Oslo
 Tel.: +47 22 85 97 48 - Fax: +47 22 85 97 50
 E-mail: t.l.wilhelmsen@jus.uio.no

Established: 1899

Officers:

President: Trine-Lise WILHELMSSEN, Nordisk Institutt for Sjørett, UiO, Karl Johans gt. 47,
 P.O.Box 6706 St. Olavs Plass, 0130 Oslo. Tel.: +47 22 85 97 48 - Fax: +47 22 85 97 50 -
 E-mail: t.l.wilhelmsen@jus.uio.no

Members of the Board:

Torbjørn BEKKEN, DNV Norge, Veritasveien 1, 1322 Høvik. Tel.: +47 67 57 99 00 - Fax:
 +47 67 57 98 07 - E-mail: torbjorn.bekken@dnv.com
 Viggo BONDI, Norges Rederiforbund, Postboks 1452 Vika, 0116 Oslo. Tel.: +47 22 40 15 00
 - Fax: +47 22 40 15 15 - E-mail: viggo.bondi@rederi.no
 Eric JACOBS, Assuranceforeningen Skuld. E-mail: eric.jacobs@skuld.no
 Karl-Johan GOMBRII, Kristinelundveien 22, P.O.Box 3033, Elisenberg N-0207 Oslo,
 Norway. Tel.: +47 22 135600 – Mobile: +47 91535603 – E-mail: kjgombrii@nordisk.no
 Stephen KNUDTZON, Thommessen Krefthing Greve Lund, Postboks 1484 Vika, 0116
 Oslo. Tel.: +47 23 11 11 11 - Fax: +47 23 11 10 10 - E-mail: skn@thommessen.no
 Morten LUND, Vogt & Wiig Advokatfirmaet AS, Postboks 1503 Vika, 0117 Oslo. Tel.:
 +47 22 41 01 90 - Fax: +47 22 42 54 85 - E-mail: morten.lund@vogtwiig.no
 Erik RØSÆG, Nordisk Institutt for Sjørett, Universitetet i Oslo, Postboks 6706 St. Olavs plass,
 0130 Oslo. Tel.: +47 22 85 97 52 - Fax: +47 22 85 97 50 - E-mail: erik.rosag@jus.uio.no
 Arne FALKANGER THORSEN, Bergesen Worldwide Gas ASA, Postboks 2800 Solli, 0204
 Oslo. Tel.: +47 22 12 05 05 - Fax: +47 22 12 05 00 - E-mail: arne.thorsen@bwgas.com
 Gaute GJELSTEN, Wikborg Rein & Co, Postboks 1513 Vika, 0117 Oslo. Tel.: +47 2282 75 00
 - Fax: +47 22 82 75 01 - E-mail: ggj@wr.no

Deputy:

Ingeborg OLEBAKKEN, Thommessen Krefthing Greve Lund, Postboks 1484 Vika, 0116
 Oslo. Tel.: +47 23 11 11 11 - Fax: +47 23 11 10 10

Titulary Members:

Karl-Johan GOMBRII

Member Associations

PAKISTAN**PAKISTAN MARITIME LAW ASSOCIATION**

c/o Khursheed Khan & Associates, Lawyers – Intellectual Property Attorneys,
 47 Modern CHS, Tipu Sultan Road. Karachi – 75350 Pakistan
 Tel: 9221-3453 3665, 9221-3453 3669, 9221-3453 3653
 Fax: 9221-3454 9272 & 9221-3453 6109
 Anti-Piracy Hotline: 0800-01234 – Ship Arrest Hotline: 92-300-8236723
 Email: maritime@pakistanlaw.com – Website: www.pakistanlaw.com

Established: 1998

Officers:

President: Zulfiqar Ahmad KHAN, c/o Khursheed Khan & Associates, Lawyers – Intellectual Property Attorneys, 47 Modern CHS, Tipu Sultan Road. Karachi – 75350 Pakistan. Tel: 9221-3453 3665, 9221-3453 3669, 9221-3453 3653 – Fax: 9221-3454 9272 & 9221-3453 6109 – Anti-Piracy Hotline: 0800-01234 – Ship Arrest Hotline: 92-300-8236723 – Email: attorney@pakistanlaw.com

Secretary: Iftikhar AHMED

Treasurer: Zainab HUSAIN

PANAMA**ASOCIACION PANAMENA DE DERECHO MARITIMO**

(Panamanian Maritime Law Association)

P.O. Box 0831-1423 - Panama, Republic of Panama

Tel.: +507 302-0106 - Fax: +507 302-0107 - E-mail: info@apdm.org

Website: www.apdm.org

Established: 1979

Officers:

President: Jazmina ROVI

Vice President: Jorge Loaiza III

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Member Associations

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(Peruvian Maritime Law Association)

Calle Barcelona 425 - San Isidro - Lima 27 - PERU

Tel.: +51 1 422.3030 - Fax: +51 1 422.8693 - E-mail: general@vyalaw.com.pe*Established: 1977***Officers:***Executive Committee:**President:* Dr. Katerina VUSKOVIC, Calle Barcelona 425, San Isidro, Lima 27, Peru.
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Vice Admiral Mario CASTRO DE MENDOZA

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Francisco ARCA PATIÑO, Manuel QUIROGA CARMONA, Percy URDAY BERENGUEL, Ricardo VIGIL TOLEDO

Membership:

Individual Members: 42

Member Associations

PHILIPPINES

MARITIME LAW ASSOCIATION OF THE PHILIPPINES (MARLAW)

c/o Del Rosario Bagamasbad & Raboca**
Rosadel Building, 1011 Metropolitan Avenue, Makati City, Philippines
Tel. (632) 899-6724-25; 8996749 – Fax: (632) 890-3420
E-mail: tcgonzales@veralaw.com.ph

Established: 1981

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INTERNATIONAL MARITIME LAW ASSOCIATION

Tel.: +7 495 660.4000 – Fax: +7 495 660.4099 – E-mail: vmednikov@scf-group.ru

Website www.scf-group.ru

Established: 1968

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President: Adv. Vladimir A. MEDNIKOV, Executive Vice-President of OAO “Sovcomflot”, Administrative Director, Russian Federation, Moscow. Tel.: +7 495 660.4000 – Fax: +7 495 660.4099 – E-mail: vmednikov@scf-group.ru – Website www.scf-group.ru

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c/o Rodyk & Davidson LLP - For the attention of Mr Lawrence Teh
 80 Raffles Place, #33-00 UOB Plaza 1, Singapore 048624
 Tel. +65 6455.1755 – E-mail: mail@mlas.org.sg – Website: www.mlas.org.sg

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(Maritime Law Association of Slovenia)
 c/o University of Ljubljana, Faculty of Maritime Studies and Transport
 Pot pomorščakov 4, SI 6320 Portorož, Slovenija
 Tel.: +386 5 676.7100 - Fax: +386 5 676.7130 -
 E-mail: mlas@fpp.edu - Website: www.mlas.fpp.edu

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 Dr. Tristan ŠKER, Triglav Insurance Company, Ravne 9, 6276 Pobegi, Slovenia. E-mail: sker.tristan@gmail.com.

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**THE MARITIME LAW ASSOCIATION
OF THE REPUBLIC OF SOUTH AFRICA**

All correspondence to be addressed to the Secretariat:

Anisa GOVENDER, Van Velden Pike & Partners,

Unit 3, The Crescent, Westway Office Park, Spine Road.

Phone: +27-31-265 0651 – Fax: +27-(0)-86 604 6318 – Mobile: +27-71 860 4222

E-mail: anisa@vanveldenpike.com

Established: 1974

Officers:

President: Advocate Michael WRAGGE SC, Advocate Cape Bar, 617 Huguenot Chambers, 40 Queen Victoria Street, Cape Town. 8001, Phone: +27-21-423 4389 – Fax: +27-21-424 1821 – Mobile: +27-83-310-1744 – E-mail: michaelw@netactive.co.za

Vice-President: Captain Roy MARTIN, Admiralty Shipbrokers and Consultants, 59 Westville Road, Westville, Durban, 3630, POBox 442, Westville, 3630, Durban. Phone: +27 31 267 1795 – Fax: +27 31 267 0316 – Email: martin@admiralty.co.za

Secretary: Anisa GOVENDER, Van Velden Pike & Partners, Unit 3, The Crescent, Westway Office Park, Spine Road. Phone: +27-31-265 0651 – Fax: +27-(0)-86 604 6318 – Mobile: +27-71 860 4222 – E-mail: anisa@vanveldenpike.com

Treasurer: Colin SHAW, 1st Floor Millweed House 169 – 175 Maydon Road, Maydon Wharf Durban 4001. Phone: + 27 31 274 2503 – Fax: +27 86 510 8978 – Mobile: +21 82 374 1905 – E-mail: colin.shaw@bidports.co.za

Executive Committee:

Dusty DONNELLY, 9th Floor, 6 Durban Club Place. Phone: +27 31 304 6649 – Fax: +27 31 304 3061 – Cell: +27 82 940 4347 – E-mail: donnellyd@law.co.za

Peter EDWARDS, Dawson Edwards & Associates, 'De Hoop', 2 Vriende Street. Gardens, Cape Town, 8001, POBox 12425, Mill Street, Cape Town, 8010. Phone: +27-82-4951100 – E-mail: petere@dawsons.co.za

Edmund GREINER, Shepstone & Wylie, International Transport and Trade Department 18th Floor, 2 Long Street CAPE TOWN, 8000 POBox 7452 Roggebaai, 8012 Docex 272 Cape Town. Tel: (+27) 21 419 6495 – Fax: (+27) 21 418 1974 – Mobile (+27) 82 33 333 59 – E-mail greiner@wylie.co.za

Malcolm HARTWELL, Deneys Reitz, 3 Pencarrow Crescent, La Lucia Ridge 4051, P O Box 5003, Pencarrow Park 4019. Tel: +27 31 582 5622 – Fax: +27 31 582 5722 – Docex 90 Durban – E-mail: malcolm.hartwell@deneysreitz.co.za

Patrick HOLLOWAY, Webber Wentzel, 15th Floor, Convention Tower, Heerengracht, Cape Town, 8001. Tel.: +21 21 431 7000 – Fax: +27 21 431 8000 – E-mail: patrick.holloway@webberwentzel.com

James MACKENZIE, Cape Bar 3rd Floor, Bank Chambers. Tel. +27 21 4244274 – Cell.: +27 82 460 4708 – E-mail: mackenzie@capebar.co.za

Member Associations

Ex Officio Chapter Chairpersons

Brian WATT, Brian Watt Maritime Consulting CC, POBox 38128 Faerie Glen 0043. Tel.: +27 12-9913947 – Fax: +27 12-9916253/0866-153783 – E-mail: brwatt@iafrica.com
 Gavin FITZMAURICE, Webber Wentzel, 15th Floor, Convention Tower, Heerengracht, Cape Town, 8001. Tel: +21 21 431 7000 – Fax: +27 21 431 8000 – E-mail: gavin.fitzmaurice@webberwentzel.com
 Captain Roy MARTIN, Admiralty Shipbrokers and Consultants, 59 Westville Road, Westville, Durban, 3630, POBox 442, Westville, 3630, Durban. Tel.: +27 31 267 1795 – Fax: +27 31 267 0316 – E-mail: martin@admiralty.co.za

SPAIN

ASOCIACIÓN ESPAÑOLA DE DERECHO MARÍTIMO

(Spanish Maritime Law Association)

c/o Dr. Ignacio Arroyo Martínez, Paseo de Gracia 92,
 08008 Barcelona - Tel.: +34 93.487.11.12 - Fax: +34 93.487.35.62
 E-mail: rya@rya.es - Web: www.aedm.es

Established: January, 1949

Officers

President: Ignacio ARROYO MARTÍNEZ Paseo de Gracia 92, 08008 Barcelona, Tel.: +34 93.487.11.12, Fax: +34 93.487.35.62, e-mail: rya@rya.es

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 E-mail: pilar@delmoralyarribas.com

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The Swedish Maritime Law Association
 Mäster Samuelsgatan 20, Box 1065, SE-10139 Stockholm, Sweden
 Tel.: +46 527 70 821 - Fax: +46 8-667 73 80
 E-mail: : erik.linnarsson@lindah.se

Officers

President: Erik LINNARSSON, Mäster Samuelsgatan 20, Box 1065, SE-10139
 Stockholm, Sweden. Tel.: +46 527 70 821 - Fax: +46 8-667 73 80 -
 E-mail: erik.linnarsson@lindah.se

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c/o Mr. Andrew D. TAYLOR,

Reed Smith, The Broadgate Tower, 20 Primrose Street, London EC2A 2RS

Tel.: +44 20 3116 3000 - Fax +44 20 3116 3999

E-mail: adtaylor@reedsmith.com - www.bmla.org.uk

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THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

c/o Patrick J. BONNER, Freehill Hogan & Mahar LLP,
80 Pine Street, New York, NY 10005-1759.
Tel.: +1 212.425.1900 – Fax: 212.425.1901
E-mail: bonner@freehill.com

Established: 1899

Officers:

President: Patrick J. BONNER, Freehill Hogan & Mahar LLP, 80 Pine Street, New York, NY 10005-1759. Tel.: +1 212.425.1900 – Fax: 212.425.1901 –
E-mail: bonner@freehill.com

Immediate Past President: Warren J. MARWEDEL, Marwedel Minichello & Reeb PC, 10 South Riverside Plaza, Suite 720, Chicago, IL 60606. Tel.: +1 312 902.1600, Ext 5310 –
Fax: +1 312 902.9900 - E-mail: wmarwedel@mnr-law.com

First Vice-President: Robert B. PARRISH, Moseley Prichard Parrish Knight & Jones, 501 W. Bay Street, Jacksonville, FL 32202. Tel.: +1 904-421-8436 – Fax: +1 904-421-8437 –
E-mail: bparrish@mppkj.com

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E-mail: rclyne@hillrivkins.com

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Secretary: Harold K. WATSON, Locke Lord Bissell & Liddell LLP, 2800 JP Morgan Chase Tower, 600 Travis Street, Houston, TX 77002. Tel.: +1 713-226-1449 –
Fax: +1 713-223-3717 – E-mail hwatson@lockelord.com

Membership Secretary: David J. FARRELL, Jr., Admiralty Law Office, 2355 Main Street, P.O. Box 186, S. Chatham, MA 02659. Tel.: +1 508-432-2121 – Fax: +1 508-432-2334 –
E-mail: farrell@sealaw.org

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Membership:

3075.

URUGUAY

ASOCIACION URUGUAYA DE DERECHO MARITIMO

(Uruguayan Maritime Law Association)

Rio Negro 1394 Esc. 504, - Montevideo, Uruguay

Tel.: +598 2 901.2552 - 901.7221 - Fax: +598 2 902.3157

E-mail: audm@adinet.com.uy

Established: 1985

Officers:

President: Dra. Margarita RODRIGUEZ SALABERRY

E-mail: margaritarodriguez@anp.com.uy - Tel. 1901.1852 [ANP] - Cel.: 099 615 915

Secretary: Trad. Púb. Graciela SPOTURNO

E-mail: kelyspot@usa.net - Tel. 401 78 19 - Cel.: 099 915 027

Treasurer: Ing. Emilio OHNO

E-mail: eiohno@netgate.com.uy - Tel.: 916 40 92 - Cel.: 099 709 969

Member Associations

VENEZUELA

ASOCIACION VENEZOLANA DE DERECHO MARITIMO

(Comité Marítimo Venezolano)

Av. Libertador, Multicentro Empresarial del Este
Torre Libertador, Núcleo B, Piso 15, Oficina B-151
Chacao - Caracas, 1060, Venezuela
Tel.: 58212-2659555/2674587 - Fax: 58212-2640305
E-mail: avdmar@cantv.net

Established: 1977

Officers:

President: Francisco Antonio VILLARROEL RODRÍGUEZ, Tel.: (58-212) 952.62.28/
(58-212) 286.35.48 - Mobile/cellular (58-414) 3233029 - Faxes: (58-212) 285.57.06 /
(58-212) 952.33.06 - E-mail: venezuelanlaw@cantv.net

Council of former Presidents:

Luis COVA-ARRIA, Tel.: (58-212) 265.9555 - Fax: (58-212) 264.0305 - Mobile/Cellular
(58-416) 6210247 - E-mail: Luis.Cova@LuisCovaA.com, luiscovaa@hotmail.com
Armando TORRES-PARTIDAS, Mobile/Cellular (58-414) 3272487
Wagner ULLOA-FERRER, Tel.: (58-212) 864.7686/864.9302/264.8116 - Fax: (58-212)
864.8119 E-mail: matheusandulloa@cantv.net
Tulio ALVAREZ-LEDO, Tel.: (58-212) 992.4662 - E-mail: tulioalvarezledo@cantv.net
Freddy BELISARIO CAPELLA, Tel./fax (58-212) 943.5064 -
E-mail: Belisario02@cantv.net
Omar FRANCO-OTTAVI, Tel.: (58-281) 2677267 - E-mail: legalmar@cantv.net
Alberto LOVERA VIANA, Tel: (58-212) 951.21.06 - E-mail: alberto_Lovera@yahoo.com

Vice Presidents:

EXECUTIVE: Aurelio FERNÁNDEZ CONCHESO, Tel: (58-212) 285.6294 -
E-mail: clyde.co@cantv.net

LEGISLATION: Ramón CASTRO, Tel: (58-212) 762.4029 - Email: castrocortez@yahoo.com

INSTITUTIONAL RELATIONS: Ivan SABATINO, Tel: (58-242) 364.1801
E-mail: mail@sabatinop.com

MARITIME MATTERS: Rodolfo TOVAR, Tel: (58-212) 709.0103 - E-mail: rjtm@conferry.com

PUBLICITY AND EVENTS: Maritza AVILÁN, Tel: (58-212) 991.3774 -

E-mail: Maritza@seafreightvenezuela.com

OIL MATTERS: Henry MORIAN, Tel: (58-212) 265.9555 -

E-mail: henry.morian@luiscovaa.com

PORT MATTERS: José SABATINO, Tel: (58-242) 364.1801 Email: mail@sabatinop.com

INSURANCE MATTERS: Bernardo BENTATA, Tel: (58-212) 953.2031 -

E-mail: Bentata@bentatalegal.com

Directors:

Pedro PEREZ SEGNINI, Gustavo OMAÑA, Omar LEÓN, Tomas MALAVÉ, Ana Mary RAMÍREZ.

Alternative Directors: Carlos LUENGO ROMERO, María del Cielo SANCHEZ, Juan Antonio MALPICA, Jesús ROJAS GUERINI, Miguel LÓPEZ

Secretary General: Patricia MARTINEZ de FORTOUL, Tel.: (58-212) 265.9555 - Fax:
(58-212) 264.0305 - Mobile/Cellular (58-414) 327.8950 -

E-mail: patricia.martinez@luiscovaa.com

Alternative Secretary General: Maria Claudia GUARNIERI

Member Associations

Treasurer: Eugenio MORENO, Tel.: (58-212) 976.7026 - E-mail: emorenovzla@cantv.net

Alternative Treasurer: Gilberto VILLALBA

Disciplinary Court Magistrates:

Antonio RAMIREZ Tiuna BENITO, Alberto BAUMEISTER

Alternatives Disciplinary Court Magistrates:

Leoncio LANDAEZ, Ana Karina LEIVA, Lubin CHACÓN GARCIA

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Accountant Inspector Assistant: Elsy RODRIGUEZ

Titulary Members

Tulio ALVAREZ-LEDO, Juan A. ANDUIZA, Freddy J. BELISARIO CAPELLA, Luis CORREA-PEREZ, Luis COVA-ARRIA, Aurelio FERNANDEZ-CONCHESO, Omar FRANCO-OTTAVI, Alberto LOVERA-VIANA, Carlos MATHEUS-GONZALEZ, Rafael REYERO-ALVAREZ, José Alfredo SABATINO-PIZZOLANTE, Julio SÁNCHEZ-VEGAS, Wagner ULLOA-FERRER and Francisco VILLARROEL-RODRIGUEZ.

Temporary Members

**PROVISIONAL MEMBERS
MEMBRES PROVISOIRES**

HONDURAS

Mr. Norman Martinez
IMLI
P.O.Box 31, Msida, MSD 01 Malta

KENYA

Mr. Eric Okumu Ogola
Ogola & Ochwya Associates
P.O. Box 16858 MOMBASA, Kenya
E-mail: ogola@cootowlaw.com

ZAIRE

Mr. Stanys ISAKI MBAMVU
c/o OZAC/Commissariat d'Avaries
B.P. 8806 KINSHASA
E-mail: stanysisaki@yahoo.fr

MEMBERS HONORIS CAUSA MEMBRES HONORIS CAUSA

Stuart BEARE

24, Ripplevale Grove, London N1 1HU, United Kingdom. Tel.: +44 20 7609.0766 - E-mail: stuart.beare@btinternet.com

William BIRCH REYNARDSON

Barrister at Law, Hon. Secretary of the British Maritime Law Association, Adwell House, Tetsworth, Oxfordshire OX9 7DQ, United Kingdom. Tel. : (1844) 281.204 - Fax : (1844) 281.300

Gerold HERRMANN

United Commission on International Trade Law, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria. Fax (431) 260605813

His Honour Judge Thomas MENSAH

Dr., Judge of the Tribunal for the Law of the Sea, 50 Connaught Drive, London NW11 6BJ, United Kingdom. Tel.: (20) 84583180 - Fax: (20) 84558288 - E-mail: tamensah@yahoo.co.uk

The Honourable William O'NEIL

2 Deanswood Close, Woodcote, Oxfordshire, England RE8 0PW

Alfred H. E. POPP Q.C.

Senior General Counsel Admiralty & Maritime Law Department of Justice, Maritime Law Secretariat, 594 Highland Avenue, Ottawa, ON H2A 2K1. Tel.: +1 613 729.4233 - Fax +1 613 729.5082 - E-mail: poppa@justice.gc.ca

TITULARY MEMBERS MEMBRES TITULAIRES

Mitsuo ABE

Attorney at Law, Member of the Japanese Maritime Arbitration, c/o Mitsuo Abe Law Firm, 2-4-13-302 Hirakawa-Cho, Chiyoda-ku, 102-0093, Tokyo, Japan. Tel.: (81-3) 5275.3397 - Fax: (81-3) 5275.3398 - E-mail: abemituo@law.ne.jp

Christos ACHIS

General Manager, Horizon Insurance Co., Ltd., 26a Amalias Ave., Athens 118, Greece.

Eduardo ALBORS MÉNDEZ

Partner Albors Galiano Portales, Velazquez, 53, 28001 Madrid, Spain. Tel.: +34 91 435 66 17 - Fax +34 91 576 74 23 - E-mail: ealbors@alborsgaliano.com

Titulary Members

José M. ALCANTARA GONZALEZ

Maritime lawyer in Madrid, Director of the Law firm AMYA, Arbitrator, Average Adjuster, Past President of the Spanish Maritime Law Association, Executive Vice-President of the Spanish Association of Maritime Arbitration, Past President of the Iberoamerican Institute of Maritime Law. Office: Princesa, 61, 28008 Madrid, Spain. Tel.: +34 91 548.8328 - Fax: +34 91 548.8256 - E-mail: jalcantara@amya.es

Mme Pascale ALLAIRE BOURGIN

24 rue Saint Augustin, 75002 Paris, France.

Tulio ALVAREZ LEDO

Doctor of Law, Lawyer and Professor, partner of Law Firm Alvarez & Lovera, Past President of the Asociacion Venezolana de Derecho Maritimo, Urbanización Santa Rosa de Lima, Calle E, Residencias Coquito, Apto. 4-A, Caracas, Venezuela. Tel.: (58-212) 9924.662 - E-mail: tulioalvarezledo@cantv.net

Charles B. ANDERSON

Skuld North America Inc., 317 Madison Avenue, Suite 708, New York, NY 10017, U.S.A. Tel.: +1 212 758.9936 - Fax: +1 212 758.9935 - E-mail: NY@skuld.com - Web: www.skuld.com

Constantinos ANDREOPOULOS

Lawyer, General Secretary of the Hellenic Maritime Law Association, 8, Kiou Str., 166 73 Ano Voula, Greece.

Juan A. ANDUIZA

Squire Sanders & Dempsey LLP, 30 Rockefeller Plz, floor 22M, New York, N.Y. 10112, USA. Tel.: +1-212 8729890 - Fax: +1-212 8729815 - E-mail: janduiza@ssd.com

W. David ANGUS, Q.C.

Past-President of the Canadian Maritime Law Association, 1155 René Lévesque Blvd. West, Suite 2410, Montréal, Québec H3B 3X7. Direct phone: (514) 397.0337 – Fax: (514) 397.8786 – Cellular: (514) 984.6088 – E-mail: dangus@bellnet.ca

Armando ANJOS HENRIQUES

Armando Henriques, Ana Cristina Pimentel & Associados, Sociedade de Advogados, RL, Av. Miguel Bombarda, 50-2º, 1050-166 Lisboa, Portugal. Tel.: +351 21 781.9990 - Fax +351 21 793.0615 - E-mail ah.acp@netcabo.pt

Anthony M. ANTAPASSIS

Advocate, Associate Professor of Commercial and Maritime Law, Faculty of Law, University of Athens, President of the Hellenic Maritime Law Association, 10 Akti Poseidonos, 185 31 Piraeus, Greece. Tel.: (1) 422.5181 - Fax: (1) 422.3449 - E-mail: antalblaw@ath.forthnet.gr

José M. APOLO

Maritime Attorney, Bachellor in International Sciences in Ecuador, Executive President of the firm Estudio Juridico Apolo & Asociados S.A., Maritime & Port Group S.A., President of the Ecuadorean Association of Maritime Studies and Law “ASEDMAR”, Vice-President for Ecuador of the Iberoamerican Institute of Maritime Law, Junín 105, “Vista al Río” Building 6th Floor, Guayaquil, Ecuador. P.O. Box 3548. Telf. 593.42.560.100 – Fax 593.42.560.700 – E-mail jmapolo@lawyers.ec

Titulary Members

Francisco ARCA PATIÑO

Lawyer, Member of the Executive Committee of the Peruvian Maritime Law Association, Calle Virtud y Unión (ex Calle 12) N° 160, Urb. Corpac, Lima 27, Peru. E-mail: interlog@interlog.com.pe

Ignacio ARROYO

Advocate, Ramos & Arroyo, Professor at the University of Barcelona, President of the Spanish Maritime Law Association, General Editor of "Anuario de Derecho Marítimo", Paseo de Gracia 92, 08008 Barcelona 8, Spain. Tel.: (93) 487.1112 - Fax (93) 487.3562 - E-mail: rya@rya.es

David ATTARD

Professor, Director of International Maritime Law Institute, P O Box 31, Msida, MSD 01, Malta. Tel.: (356) 310814 - Fax: (356) 343092 - E-mail: director@imli.org

Paul C. AVRAMEAS

Advocate, 133 Filonos Street, Piraeus 185 36, Greece. Tel.: (1) 429.4580 - Tlx: 212966 JURA GR - Fax: (1) 429.4511.

Eduardo BAGES AGUSTI

Nav. Maersk España, Plaza Pablo Ruiz Picasso, s/n, Torre Picasso, 28020 Madrid, Spain. Tel.: (91) 572.4100 - Fax: (91) 572.4177.

Nicola BALESTRA

Avocate, Piazza Corvetto 2-5, 16122 Genova, Italy. Tel.: (010) 889.252 - Fax: (010) 885.259 - E-mail: bbp.ge@bbpartners.it

Mario Ferreira BASTOS RAPOSO

Lawyer, Dean of "Ordem dos Advogados" (1975/1977), Vice-Chairman of "União Internacional dos Advogados" (1976/1978), Member of "Conselho Superior do Ministério Público" (1977/1978), Minister of Justice in former Governments, Member of the Parliament (1979/1981/1983), Member of "Secção de Direito Marítimo e Aéreo da Associação Jurídica" (1964), Member of "Associação Portuguesa de Direito Marítimo" (1983), Chairman of "Comissão Internacional de Juristas Secção Portuguesa", R. Rodrigo da Fonseca, 149-1° Dt°, 1070-242 Lisboa, Portugal. Tel.: (351) 21 382.6200/08 - Fax: (351) 21 382.6209.

Freddy BELISARIO-CAPELLA

Venezuelan lawyer, Master in Admiralty Law Tulane University, U.S.A., Professor in Maritime Law in the Central University of Venezuela, VMLA's Director, Calle San Juan, Quinta Coquito, Sorocaima, La Trinidad, Caracas, Venezuela. Tel./Fax: (58-212) 943.5064 - E-mail: Belisario02@cantv.net

Jorge BENGOLEA ZAPATA

Abogado, Professor Titular de Derecho de la Navegacion en la Facultad de Derecho y Ciencias Sociales de la Universidad de Buenos Aires, Professor de Derecho Marítimo y Legislacion Aduanera en la Facultad de Ciencias Juridicas de la Plata, Corrientes 1309, 7° p. of.19, Buenos Aires, Argentina.

Francesco BERLINGIERI

O.B.E., Advocate, President ad Honorem of CMI, former Professor at the University of Genoa, doctor of law honoris causa at the Universities of Antwerp, Athens and Bologna, President ad honorem of the Italian Maritime Law Association, 10 Via Roma, 16121 Genoa, Italy. Tel.: +39 010 586.441 - Fax: +39 010 594.805 - E-mail: slb@dirmar.it - www.studiodilegaleberlingieri.it

Titulary Members

Giorgio BERLINGIERI

Advocate, President of the Italian Maritime Law Association, Senior Partner Studio Legale Berlingieri, 10 Via Roma, 16121 Genoa, Italy. Tel.: +39 010 586.441 - Fax: +39 010 594.805 - E-mail: presidenza@aidim.org - www.aidim.org - www.studiolegaleberlingieri.it

Michael J. BIRD

Bull, Housser & Tupper LLP, 3000 Royal Centre, 1055 West Georgia Street, Vancouver BC V6E 3R3 Canada. Tel.: (604) 641.4970 - Fax: (604) 646.2641 - E-mail: mjbird@bht.com

Angelo BOGLIONE

Advocate, Via G. D'Annunzio 2/50, 16121 Genoa, Italy. Tel. +39 010 570.4951 - Fax: +39 010 570.4955 - E-mail: info@boglione.eu

Miss Giorgia M. BOI

Advocate, Professor at the University of Genoa, Via XX Settembre 26/9, 16121 Genoa, Italy. Tel./Fax: (+39) 010 8682434 - E-mail: studiolegaleboi@gmail.com

Philippe BOISSON

Conseiller Juridique, Vice-President de l'Association Française du Droit Maritime, 67/71, Boulevard du Château, 92200 Neuilly sur Seine, France. Tel.: +33 1 55.24.70.00 - Fax: +33 6 80.67.66.12 - Mobile: +33 6 80.67.66.12 - E-mail: philippe.boisson@bureauveritas.com - www.bureauveritas.com

Lars BOMAN

Lawyer, Vice President of the Swedish Maritime Law Association, Senior Partner in Law Firm Maqs Morssing & Nycander, P.O.Box 7009, SE-10386 Stockholm, Sweden. Tel.: +46 8 407.0911 - Fax: +46 8 407.0910 - E-mail: lars.boman@se.maqs.com

Pierre BONASSIES

Professeur (H) à la Faculté de Droit et de Science Politique d'Aix-Marseille, 7, Terrasse St Jérôme, 8 avenue de la Cible, 13100 Aix-en-Provence, France. Tel.: (4) 42.26.48.91 - Fax: (4) 42.38.93.18.

Franco BONELLI

Advocate, Professor at the University of Genoa, Via delle Casaccie 1, 16121 Genoa, Italy. Tel.: +39 010 84621 - Fax: +39 010 813.849 - E-mail: franco.bonelli@beplex.com

Patrick J. BONNER

First Vice President of the USMLA, c/o Freehill Hogan & Mahar LLP, 80 Pine Street, New York, NY 10005-1759, USA. Tel.: +1 212-425-1900 - Fax: +1 212-425-1901 - Website: www.freehill.com - E-mail: bonner@freehill.com

Lawrence J. BOWLES

Partner, Nourse & Bowles, LLP, One Exchange Plaza, 55 Broadway, New York, New York 10006, U.S.A. Tel.: (212) 952.6213 - Fax: (212) 952.0345 - E-mail: lbowles@nb-ny.com

David BRANDER-SMITH Q.C.

Bull, Housser & Tupper, 3000 Royal Centre, P.O.Box 11130, 1055 West Georgia Street, Vancouver B.C., Canada V6E 3R3. Tel.: (604) 687.6575, direct line (604) 641.4889 - Tlx: 04-53395 - Fax: (604) 641.4949.

Hartmut von BREVERN

Attorney at Law, partner in Remé Rechtsanwälte, former President of the German Maritime Arbitrators Association, Ballindamm, 26, 20095 Hamburg, Deutschland. Tel.: (40) 321783 - Fax: (40) 327569- E-mail: h.brevern@remelegal.de

Titulary Members

Tom BROADMORE

Past President of the Maritime Law Association of Australia and New Zealand, Barrister, PO Box 168, Wellington, New Zealand. Tel.: +64 4 499.6639 - Fax: +64 4 499.2323 - E-mail: tom.broadmore@waterfront.org.nz

Claude BUISSERET

Avocat, Ancien Président de l'Association Belge de Droit Maritime, Professeur à l'Université Libre de Bruxelles, Louizastraat 32 bus 1, B-2000 Antwerpen 1, Belgique. Tel.: (3) 231.1714 - Fax: (3) 233.0836.

Thomas BURCKHARDT

Docteur en droit et avocat, LL.M., (Harvard), juge suppléant à la Cour d'appel de Bâle, Holliger Simonius & Partner, Aeschenvorstadt 67, CH-4010 Basel, Suisse. Tel.: (61) 2064.545 - Fax: (61) 2064.546 - E-mail: burckhardt@advokaten.ch

Lizabeth L. BURRELL

Past President of the Maritime Law Association of the United States, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178-0061, USA. Tel.: (212) 696.6995 - Fax: (212) 368.8995 - E-mail: lburrell@curtis.com

Pedro CALMON FILHO

Lawyer, Professor of Commercial and Admiralty Law at the Law School of the Federal University of Rio de Janeiro, Pedro Calmon Filho & Associados, Av. Franklin Roosevelt 194/8, 20.021 Rio de Janeiro, Brasil. Tel.: (21) 220.2323 - Fax: (21) 220.7621 - Tlx: 2121606 PCFA BR.

Alberto C. CAPPAGLI

Lawyer, President of the Argentine Maritime Law Association, Partner of Marval, O'Farrell & Mairal, Reconquista 823, 5° piso, 1001 Buenos Aires, Argentina. Tel.: (11) 4877.2519 - Fax: (11) 4310.0200 - E-mail: acc@marval.com.ar

Artur Raimundo CARBONE

President of the Brazilian Maritime Law Association, Law Office Carbone, Av. Rio Branco, 109/14° floor, Rio de Janeiro, CEP 20040-004 RJ-Brasil. Tel.: (5521) 2253.3464 - Fax: (5521) 2253.0622 - E-mail: ejc@carbone.com.br

Sergio M. CARBONE

Avocat, Professeur à l'Université de Gênes, Vice-President of the Italian Maritime Law Association, Via Assarotti 20, 16122 Genoa, Italy. Tel.: +39 010 810.818 - Fax: +39 010 870.290 - E-mail: carbone@stcarbone.it

Francisco CARREIRA-PITTI

55th Street no. 225 CARPIT Bldg., El Cangrejo, Panama, Republic of Panama, Tel.: +507 269.2444 - Fax: +507 263.8290 - E-mail: paco@carreirapitti.com - carreirapitti@gmail.com

Nelson CARREYO COLLAZOS

P.O. Box 8213, Panama 7, Republic of Panama, Tel.: +507 264.8966 - Fax: +507 264.9032 - E-mail: astral@cableonda.net

Kenneth J. CARRUTHERS

The Hon. Mr Justice Kenneth Carruthers, Judge in Admiralty, Supreme Court of New South Wales, Former President of the Maritime Law Association of Australia and New Zealand, Judges Chambers, Supreme Court, Queen's Square, Sydney 2000, Australia. Tel.: (2) 230.8782 - Fax: (2) 230.8628.

Titulary Members

Gian CASTILLERO GUIRAUD

Arias, Fabrega & Fabrega PH Plaza 2000 Building, 50th Street, PO Box 0816-01098, Panama, Republic of Panama. Tel.: (507) 205.7000/205.7016 - Fax: (507) 205.7001/205.7002 - E-mail: gian@arifa.com

Giorgio CAVALLO

Average Adjuster, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: +39 010 562623 - Fax: +39 010 587259 - E-mail: gcavallo@studiogcavallo.it

Diego Esteban CHAMI

PhD in Law from the University of Buenos Aires. Maritime Law Professor at the University of Buenos Aires Law School (www.comission311.com.ar). Pro-Treasurer of the Argentine Maritime Law Association, Senior Partner of Estudio Chami-Di Menna y Asociados, Libertad N° 567, 4th floor, 1012 Buenos Aires, Argentina. Tel: +54 11 4382.4060 - Fax +54 11 4382.4243 - Email: diego@chami-dimenna.com.ar; www.chami-dimenna.com.ar

George F. CHANDLER, III

Advocate, Partner in Hill Rivkins LLP, 55 Waugh Dr. Ste 1200, Houston, Texas 77007, U.S.A. Tel.: (713) 457.2289 - Fax: (713) 223.8106 - E-Mail: gchandler@hillrivkins.com

Michael Marks COHEN

Nicoletti Hornig Campise & Sweeney, Wall Street Plaza, 88 Pine Street, New York, NY 10005-1801, U.S.A., Tel.: (212) 220.0390- Fax: (212) 220.3784 - E-mail: mcohen@nicolettihornig.com

Guilherme George CONCEICAO SILVA

Docteur en droit, Capitaine de Frégate, Avocat, Représentant de l'Etat, Major de la Marine, Ancien Professeur de Droit Maritime International, Rua Victor Cordon, 1, 4°-Esq. A, 1200 Lisboa, Portugal.

Eugenio CORNEJO FULLER

Honorary Vice-President of the C.M.I., Prat 827, Piso 12, Casilla 75, Valparaiso, Chile. Fax: (32) 25.26.22.

Eugenio CORNEJO LACROIX

Lawyer, Average Adjuster and Professor of Maritime Law and Insurance, President of the Asociacion Chilena de Derecho Maritimo, Hernando de Aguirre 162 of. 1202, Providencia, Santiago, Chile. Tel.: +56 2 3315860/61/62/63 - Fax: +56 2 3315811 - E-mail: eugeniorcornejol@tie.cl

Luis CORREA-PÉREZ

Av. Abraham Lincoln c/calle El Colegio, Edif. Provincial, p./2, Ofic. 2-F, Sabana Grande, Caracas, Venezuela. Tel.: (58-212) 762.4949 - E-mail: scort@movistar.net.ve

Luis COVA ARRIA

Lawyer, Luis Cova Arria & Asociados, Former President of the Comité Maritimo Venezolano, Av. Libertador, Multicentro Empresarial del Este, Torre Libertador, Nucleo B, Piso 15, Ofic. B-151, Chacao, Caracas 1060, Venezuela. Tel.: (58-212) 265.9555 - Fax: (58-212) 264.0305 - Mobile/Cellular phone: (58-416) 621.0247 E-mail: Luis.Cova@LuisCovaA.com, luiscovaa@hotmail.com

Titulary Members

Stephan CUENI

Licencié en droit, avocat et notaire public, Wenger Mathys Plattner, Aeschenvorstadt 55, CH-4010 Basel, Suisse. Tel.: (61) 279.7000 - Fax: (61) 279.7001.

Peter J. CULLEN

c/o Stikeman, Elliott, 1155 René-Lévesque Blvd. West, Suite 400, Montreal, QC H3B 3V2, Canada. Tel.: (514) 397.3135 - Fax: (514) 397.3412 - E-mail: pcullen@stikeman.com

Christopher O. DAVIS

Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 201 St. Charles Avenue, Suite 3600, New Orleans, LA 70170, U.S.A. Tel.: +1 504 566.5251 - Fax: +1 504 636.3951 - Mobile: +1 504 909.2917 - E-mail: codavis@bakerdonelson.com - Website: www.bakerdonelson.com

Enrique DE ALBA ARANGO

Morgan & Morgan, MMG Tower, 16th Floor, 53rd E Street, Marbella, P.O. Box 0832-00232 World Trade Center, Panama, Republic of Panama. Tel.: (507) 265.7777 - Fax: (507) 265.7700 - E-mail: dealba@morimor.com

Vincent de BRAUW

Lawyer, AKD Advocaten & Notarissen, Wilhelminakade 1, 3072 AP Rotterdam, Postbus 4302, 3006 AH Rotterdam. Tel.: +31 88 253 5451 - Fax: +31 88 253 5430 - E-mail: vdebrauw@akd.nl

Colin de la RUE

Solicitor, Partner of Ince & Co., International House, 1 St. Katharine's Way London E1W 4AY, England. Tel.: (20) 7481.0010- Fax: (20) 7481.4968 - E-mail: colin.delarue@incelaw.com

José Luis DEL MORAL

Law Degree, University of Valencia, Member and Lawyer of the ICAV, Calle Poeta Querol 1, Entlo.Pta 1a y 2a, Valencia 46002, Spain. Tel: +34 96 3519500/3530176 - Fax: +34 96 3511910 - E-mail: jdelmoral@delmoralyarribas.com

Maria DE LOURDES MARENGO

Patton, Moreno & Asvat, Capital Plaza, Floor 8, Paseo Roberto Motta, Costa del Este, Panama, Zip Code 0819-05911, Panama City, Republic of Panama, Tel.: +507 264.8044 - Fax: +507 263.7038 - E-mail: mmarengo@pmlawyers.com

Henri de RICHEMONT

Avocat à la Cour, 61 rue La Boétie, 75008 Paris. Tel.: (1) 56.59.66.88 - Fax: (1) 56.59.66.80 - E-mail: henri.de.richemont@avocweb.tm.fr

Leo DELWAIDE

Professor of Maritime Law Universities Antwerp and Brussels, Markgravestraat 17, 2000 Antwerpen, Belgium. Tel.: (32-3) 205.2307 - Fax: (32-3) 205.2031 - E-mail: Leo.Delwaide@Antwerp.be

Vincent M. DE ORCHIS

De Orchis Wiener & Partners LLP, 61 Broadway, Floor 26, New York 10006-2802, U.S.A. Tel.: (1-212) 344.4700 - Fax: (1-212) 422.5299 - E-mail: vdeorchis@marinelex.com

Walter DE SA LEITAO

Lawyer "Petrobras", Av. Chile n° 65 sula, 502-E Rio de Janeiro, Centro RI 20035-900, Brazil. Tel.: (55-21) 534.2935 - Fax: (55-21) 534.4574 - E-mail: saleitao@petrobras.com.br

Titulary Members

Luis DE SAN SIMON CORTABITARTE

Abogado, c/ Regulo, 12, 28023 Madrid, Spain. Tel.: +34 91 357.9298 - Fax: +34 91 357.5037 - E-mail: lsansimon@lsansimon.com - Website: www.lsansimon.com

Ibrahima Khalil DIALLO

Professeur, Université Cheikh Anta Diop, Dakar, Sénégal. Tel. Office: 221-864-37-87 - Cell. phone: 221-680-90-65 - E-mail: dkhalil2000@yahoo.fr

Anthony DIAMOND Q.C.

1 Cannon Place, London NW3 1 EH, United Kingdom.

Christian DIERYCK

Avocat, Bredabaan 76, B-2930 Brasschaat. Tel.+fax: +32(0)3 651 93 86 - GSM: +32 (0) 475 27 33 91 - E-mail: christian.dieryck@skynet.be

William R. DORSEY, III

Former President of the Maritime Law Association of the United States, Advocate, of Counsel, 6 Waterbury Ct., Baltimore, MD 21212, U.S.A. Tel: +1 410-377-0005 – E-mail: wrd338@gmail.com

Kenjiro EGASHIRA

Professor of Law at the University of Tokyo, 25-17, Sengencho 3-chome, Higashi-Kurume, 203-0012 Tokyo, Japan. Tel.: (81-4) 2425.0547 - Fax: (81-4) 2425.0547 - E-mail: egashira@j.u-tokyo.ac.jp

Jan ERLUND

Lawyer c/o Gorrissen Federspiel Kierkegaard, 12 H.C. Andersens Boulevard, DK-1553 Copenhagen V, Denmark. Tel.: (33) 41.41.41 - Fax: (33) 41.41.33 - E-mail: je@gfklaw.dk

The Rt. Hon. Lord Justice EVANS

Essex Court Chambers, 24 Lincoln's Inn Fields, London WC2A 3ED, United Kingdom.

Aboubacar FALL

Principal Legal Counsel, Legal Services Department (GECL), African Development Bank Group, P.O. Box 323, Tunis, 1002 Belvedere, Tunisia. Email: a.fall@afdb.org – Fall_aboubacar@yahoo.fr

Aurelio FERNANDEZ-CONCHESO

Clyde & Co., Av. Francisco de Miranda, Centro Comercial El Parque, Piso 8, Los Palos Grandes, Caracas, Venezuela. Tel.: (58-212) 285.6294 - E-mail: clyde.co@cantv.net

Luis FIGAREDO PÉREZ

Maritime Lawyer, Average Adjuster, Arbitrator, Founder of the Maritime Institute of Arbitration and Conciliation (IMARCO) Uria Menendez Abogados, C/ Príncipe de Vergara, 187, 28002 Madrid, España. Tel.: + 34 915 860 768 - Fax: + 34 915 860 403 - E-mail: lfp@uria.com

Emmanuel FONTAINE

Avocat à la Cour, c/o Gide, Loyrette, Nouel, 26 Cours Albert 1^{er}, F-75008 Paris, France. Tel.: (1) 40.75.60.00.

Titulary Members

Omar FRANCO OTTAVI

Doctor of law, Lawyer, Master in Maritime Law LLM, Professor on Maritime Law Universidad Catolica Andrés Bello Caracas, Former-President of the Venezuelan Maritime Law Association, Avenida Francisco Solano, Detras del Gran Café, Edificio San German, Piso 3, Oficina 3-D, Sabana Grande, Caracas, Venezuela. Tel.: (58-281) 2677267 - E-mail: legalmar@cantv.net

Wim FRANSEN

Avocat, Administrateur du CMI, Everdijstraat 43, 2000 Antwerpen, Belgique. Tel.: (3) 203.4500 - Fax: (3) 203.4501 - Mobile: +32 475.269486 - E-mail: wimfransen@fransenadvocaten.com

Nigel H. FRAWLEY

Secretary General of the CMI, 83 Balliol St., Toronto, Ontario, Canada. M4S 1C2. Tel.: home +1 416 923.0333 - cottage + 1 518 962.4587 - Fax: +1 416 322.2083 - E-mail: nhfrawley@earthlink.net

Tomotaka FUJITA

Professor of Law, Graduate Schools for Law and Politics, University of Tokyo, 7-3-1 Hongo, Bunkyo-ku, Tokyo, Japan, Zipcode: 113-0033. Website: www.j.u-tokyo.ac.jp/~tfujita - E-mail: tfujita@j.u-tokyo.ac.jp

Javier GALIANO SALGADO

Lawyer, Albors, Galiano & Co., c/ Velásquez, 53-3º Dcha, 28001 Madrid, Spain. Tel.: (91) 435.6617 - Fax: (91) 576.7423 - E-mail: madrid@alborsgaliano.com.

Nicholas GASKELL

Professor of Maritime and Commercial Law, TC Beirne School of Law, University of Queensland, Brisbane 4072, Australia. Tel: +61 (0)7 3365 2490 - E-mail: n.gaskell@law.uq.edu.au – web: www.law.uq.edu.au

Johanne GAUTHIER

Justice, Vice-President of the CMI, Vice-President Federal Court of Canada, Trial Division, 90 Sparks Street, 11th Floor, Ottawa, Ont. K1A OH9, Canada. Tel.: 613 996.5572 - Fax: +1 613 943.1453 - E-mail: j.gauthier@fct-cf.ca

Mark GAUTHIER

Senior Counsel, Transport Canada, Legal Services, 128 Royale Street, Gatineau Quebec, Canada J9H 6Z3. Tel.: 613-990-5778 - Fax: 613-990-5777 - E-mail markam.gauthier@tc.gc.ca

Chistopher J. GIASCHI

Giaschi & Margolis, 404-815 Hornby Street, Vancouver, BC V6Z 2E6. Tel.: +1 604 681.2866 - Fax: +1 604 681.4260 - E-mail: giaschi@admiraltylaw.com

Paul A. GILL

Solicitor, Hon. Treasurer of the Irish Maritime Law Association, Partner of Dillon Eustace, Solicitors, Grand Canal House, 1 Upper Grand Canal Street, Dublin 4, Ireland. Tel.: (1) 667.0022 - Fax: (1) 667.0042 - E-mail: paul.gill@dilloneustace.ie

Guillermo GIMENEZ DE LA CUADRA

Abogado, C/ San Fernando, 27 - 3º, 41004 - Sevilla, España. Tel.: + 34 954 228 026 - Fax: + 34 954 228 026 - E-mail: gimenezdelacuadra@mercantilmaritimo.com

Titulary Members

Philippe GODIN

Avocat à la Cour, Bouloy Grellet & Godin, 69 Rue de Richelieu, 75002 Paris, France. Tel.: (1) 44.55.38.83 - Fax: (1) 42.60.30.10 E-mail: bg.g@avocaweb.tm.fr

Paul GOEMANS

Avocat, Goemans-Mirdikian, directeur et rédacteur de la revue "Jurisprudence du Port d'Anvers", Sleutelstraat 27, B-2550 Kontich, Belgium. Tel.: (+32 3) 232.1851 - Fax: (+32 3) 233.5963- E-mail: goemans.mirdikian@skynet.be

Edgar GOLD,

Professor, C.M., Q.C., Ph. D., Past-President of the Canadian Maritime Law Association, Adjunct Professor of Maritime Law, Dalhousie University, Halifax, NS, Canada, Canadian Member, Board of Governors, World Maritime University, Malmö, Sweden and IMO - International Maritime Law Institute, Malta. 178/501 Queen Street, Brisbane, QLD 4000, Australia. Tel. +61 7 3831.5034 - Fax: +61 7 3831.5032 - Mobile: 0407-026-222 - E-mail: edgold@bigpond.net.au

Charles W.H. GOLDIE

Barrister, 2 Myddylton Place, Saffron Walden, Essex CB10 1BB, United Kingdom. Tel.: (1799) 521.417 - Fax: (1799) 520.387.

Karl-Johan GOMBRII

President of CMI, Kristinelundveien 22, P.O.Box 3033, Elisenberg N-0207 Oslo, Norway. Tel.: +47 22 135600 – Mobile: +47 91535603 – E-mail: kjgombrii@nordisk.no

Rucemah Leonardo GOMES PEREIRA

Vice-President Associação Brasileira de Direito Marítimo, Lawyer, Founding and First Chairman Brazilian Association of Average Adjusters, Professor of Maritime Insurance at Fundação Escola Nacional de Seguros - Rio de Janeiro, Professor at Universidade Corporativa da Marinha Mercante (Merchant Marine Corporative University), Lecturer at Fundação Getúlio Vargas School of Law, at Unisantos University, Founding Member of Instituto Iberoamericano de Derecho Marítimo, Appointed as Arbitrator of China Maritime Arbitration Commission (CMAC), Regular Member of Association Mondiale de Dispatcheurs (AMD) ex Association Internationale de Dispatcheurs Européens, Manager of Rucemah & Sons Average Adjusting, Avenida Churchill 60 GR 303/304, CEP: 20020-050, Rio de Janeiro - RJ. - Brazil. Tel: (55) (21) 2262-4111; 2262-5655 and 2262-6096 - Fax: (55) (21) 2262-8226 - E-mail: rucemahpereira@yahoo.com.br

José Luis GONI

Abogado, Partner Goni & Co. Abogados, Arbitrator of the Spanish Council of the Chambers of Commerce Industry and Shipping, Velasquez 24-3ª dcha, 28001 Madrid 6, Spain. Tel.: (91) 563.4740 - Fax: (91) 563.1143 - Email: goni@goni-abogados.com.

Rodolfo Angel GONZALEZ LEBRERO

Lawyer, Doctor of Laws, Lebrero & Co. Abogados, C/ Alfonso XII, 24 - 4º, 28014 Madrid, España. Tel.: + 34 915 313 605 - Fax: + 34 915 314 194
E-mail: rodlebrero@lebreroandco.com

Manuel Angel GONZALEZ RODRIGUEZ

Garrigues & Andersen Norte, S.L., Rodriguez Arias, 15-4º, 48008 Bilbao, Spain. Tel.: (94) 4700699 - Fax: (94) 4447998

Titulary Members

Luis GONZALO MORALES

Calle 86, No. 11-50, 1202, Bogota, Colombia, Tel.: +571 257.5354 - Fax +571 218.6207 - Tel. office: +571 530.3072 - E-mail: lgmor@apm.net.co

Gideon GORDON

Vice President Israel Maritime Law Association, S. Friedman & Co., 31 Ha'atzmaut Road, Haifa, Israel. Tel.: (4) 670.701 - Fax: (4) 670.754

Lars GORTON

Juridiska Fakulteten, Box 207, 22100 Lund, Sweden. Tel.: +46 2221127 – E-mail: lars.gorton@jur.lu.se

James E. GOULD

Q.C., Counsel, McInnes Cooper, Purdy's Wharf Tower II, 1300-1969 Upper Water Street, P.O.Box 730, Halifax, NS B3J 2V1. Tel.: (902) 444.8822 - Fax: (902) 425.6350 - E-mail: james.gould@mcinnescooper.com

Ivo GRABOVAC

Doctor of Law, Professor of Maritime and Transport Laws at the University of Split Faculty of Law, Domovinskog rata 8, 21000 Split, Croatia.

Me Luc GRELLET

Avocat à la Cour, Bouloy Grellet & Godin, 69, rue de Richelieu, 75002 Paris, France. Tel.: (1) 44.55.38.33 - Fax: (1) 42.60.30.10 - E-mail: bg.g@avocaweb.tm.fr

Patrick J.S. GRIGGS

Solicitor of the Supreme Court of Judicature, Past President of CMI, Senior Partner of Ince & Co (Solicitors), International House, 1 St. Katharine's Way London E1W 1AY, England. Tel.: (20) 7481.0010 - Fax: (20) 7481.4968 - E-mail: pm.griggs@yahoo.co.uk

Etienne GUTT

Président Emérite de la Cour d'Arbitrage du Royaume de Belgique, Professeur émérite de l'Université de Bruxelles, 7 rue Basse, 1350 Jandrain-Jandrenouille, Belgique. Tel.: (19) 633.950.

José Tomas GUZMAN SALCEDO

Lawyer, Average Adjuster, Professor of Maritime & Insurance Law, Director of Chilean Maritime Law Association, Hundaya 60, Of. 503. Las Condes 7550188 Santiago, Chile - Tel. +56 2 3315860/61/62/63 - Fax: +56 2 3315811 - E-mail: jtomasguzman@jtguzmanycia.cl

Taichi HARAMO

Dr. jur., Professor, Faculty of Law, Teikyo University, 1034-1 Fussa, Fussa-shi, Tokyo 197-0011, Japan. Tel.: (81-4) 2551.1549 - Fax: (81-4) 2530.5546 - E-mail: haramo@mti.biglobe.ne.jp

Sean Joseph HARRINGTON

Justice, Federal Court, 90 Sparks Street, Ottawa, ON K1A 0H9, Canada. Tel.: (613) 947.4672 - Fax: (613) 947.4679 - E-mail: sean.harrington@cas-satj.gc.ca.

Hiroshi HATAGUCHI

Member of the Japan Branch of the Int. Law Ass. and Japanese Society of Private Int. Law, 2-23-1, Asagaya minami, Suginami-ku, Tokyo, 165-004, Japan.

Titulary Members

Raymond P. HAYDEN

Former First Vice President of the Maritime Law Association of the United States, Partner, Hill Rivkins & Hayden LLP, 45 Broadway, Suite 1500, New York, NY 10006-3739, U.S.A. Tel.: (212) 669.0600 - Fax: (212) 669.0698 - E-mail: rhayden@hillrivkins.com

George W. HEALY III

Former President of the Maritime Law Association of the United States, Advocate, Partner, Phelps Dunbar LLP, Canal Place, 365 Canal Street - Suite 2000, New Orleans L.A. 70130-6534, U.S.A. Tel.: (504) 566.1311 - Fax: (504) 568.9130 - E-mail: healyg@phelps.com

Per Erik HEDBORG

Former President of the Swedish Association of International Maritime Law, Former Managing Director of the Swedish Steamship Owner's Insurance Association, Göteborgsgatan 34, S-411 34 Göteborg 4, Sweden.

Rolf HERBER

Professor, Doctor of law, Rechtsanwalt, Ahlers & Vogel, Schaarsteinwegsbrücke 2, D-20459 Hamburg, Germany. Tel.: (40) 3785.880 - Fax: (40) 3785.8888 - E-mail: herber@ahlers-vogel.de

Stuart HETHERINGTON

Vice President of the CMI, Colin Biggers & Paisley, Level 42, 2 Park Street, Sydney NSW 2000, Australia. Tel.: +61 2 8281.4555 - Fax: +61 2 8281.4567 - E-mail: swh@cbp.com.au

Mats HILDING

Former President of the Swedish Association of International Maritime Law, Polhemsgatan 27, S-11230 Stockholm, Sweden.

Vinko HLACA

Doctor of law, Professor of Maritime and Transport Law at the University of Rijeka, Faculty of Law, Hahlić 6, 51000 Rijeka, Croatia.

Pierre HOLLENFELTZ DU TREUX

Franslei 15, 2950 Kapellen, Belgium. Tel.: (3) 666.4131 - Fax: (3) 666.3328

Bill HOLOHAN

Holohan Solicitors, Suite 319, The Capel Building, St. Marys Abbey, Dublin 7, Ireland. Tel: +353 01 8727120 – Fax: +353 021 4300911 – E-mail: reception@billholohan.ie.

John P. HONOUR

“Sans Souci”, Hawthorne Road, Bickley, Bromley, Kent BR1 2HN, England.

Chester D. HOOPER

Former President of The Maritime Law Association of the United States, Holland & Knight LLP, 10 St. James Avenue, Boston, MA, 02116, U.S.A. Tel.: 1-617-8541472 - Fax: 1-617-5236850 - E-mail: chester.hooper@hkllaw.com

Rainer HORNBORG

Former President of Board of AB Indemnitas and former Director Hansakoncernen, Sturegatan 56, SE-114 36 Stockholm, Sweden.

Titulary Members

N. Geoffrey HUDSON

Barrister and Consultant Average Adjuster, Past Chairman of the Association of Average Adjusters, Former President of the Association Internationale de Dispatcheurs Europeens, Vice-President of the British Maritime Law Association, 5 Quayside, Woodbridge, Suffolk IP12 1BN, United Kingdom. Tel. and Fax: (1394) 383.811 - E-mail: geoffrey.hudson@albustravel.com

Jean HULLIGER

Director of the Swiss Maritime Navigation Office, Head of the Division for Communications, Federal Department of Foreign Affairs, Département fédéral des affaires étrangères, Friedhagweg 14, 3047 Bremgarten b. Bern, Suisse. Tel.: +41 (0)31 302.2732 - Fax: +41 (0)31 3014400 - E-mail: jean-hulliger@bluewin.ch

Marc A. HUYBRECHTS

Advocate, Member of the Antwerp Bar, Professor of Maritime and Transport Law at the University of Leuven and the University of Antwerp, Amerikalei 73, B-2000 Antwerpen, Belgique. Tel.: +32 3 244.1560 - Fax: +32 3 238.4140 - E-mail: m.huybrechts@elegis.be.

Juan Luis IGLESIAS PRADA

Uria Menedez Abogados, C/ Príncipe de Vergara, 187, 28002, Madrid, España. Tel.: + 34 915 860 406 - Fax: + 34 915 860 403 - E-mail: jli@uria.com

Toshiaki IGUCHI

Senior Researcher, Commercial Lines Claims Dept., Tokio Marine and Nichido Fire Insurance Co.Ltd, 2-1,Marunouchi 1-Chome, Chiyoda-ku, Tokyo 100-8050 Japan. Tel.: +813 3285 1931 – Fax: +813 3215 2973 – E-mail: toshiaki.iguchi@tmnf.jp – Web-site: www.tokiomarine-nichido.co.jp

Marko ILESIC

University of Ljubljana, Faculty of Law, Poljanski nasip 2, 1000 Ljubljana, Slovenia.

Rafael ILLESCAS ORTIZ

Catedrático de Derecho Mercantil de la Universidad Carlos III de Madrid, 126 28903 Getafe (Madrid), Spain. Tel.: +34 91 6249507 - Fax: +34 91 6249589

Dorde IVKOVIC

Advocate (Ret), POB 70, Piran 6330, Slovenia. Tel.: (66) 746863 - E-mail: ivkovic@siol.net

R.E. JAPIKSE

Advocate, Professor at the Leiden University, Vijverlaan 15, 3062 HH Rotterdam, Nederland.

John L. JOY

Partner of White, Ottenheimer & Green, P.O.Box 5457, Baine Johnston Centre, 10 Fort William Place, St. John's, Nfld., A1C 5W4, Canada. Tel.: (709) 722.7584 - Fax: (709) 722.9210 - JLJ@wob.nf.ca

Hrvoje KACIC

Doctor of Law, Professor of Maritime Law at the University of Split Faculty of Law, Attorney at Law, Petrova 21, 10000 Zagreb, Croatia.

Anton KARIZ

University of Ljubljana, Faculty of Maritime Studies and Transport, Splosna Plovba Obala 55, Portoroz 6320, Slovenia.

Titulary Members

Yoshiya KAWAMATA

President and Professor of Law of Osaka International University, Yamashina-Minami-Danchi F711, 2-1 Nishino-rikyu-cho, Yamashina-ku, Kyoto 607-8345, Japan.

Marshall P. KEATING

Advocate, Deorchis Wiener & Partners LLP, 61 Broadway - Floor 26, New York, NY 10006-2802, U.S.A. Office Tel.: (212) 344.4700 - Fax: (212) 422.5299 - E-mail: keating@marinelex.com

Tony KEGELS

Avocat, Mechelsesteenweg 196, 2018 Antwerpen, Belgique.

Sean KELLEHER

Manager, Legal Department, Irish Dairy Board, Grattan House, Lr. Mount Street, Dublin 2, Ireland. Tel.: (1) 6619.599 -Fax: (1) 662.2941 - E-mail: skelleher@idb.ie

Aliki KIANTOU-PAMBOUKI (Mrs.)

Professor at the University of Thessaloniki, 3 Agias Theodoras Street, 546 23 Thessaloniki, Greece. Tel.: (31) 221.503 - Fax: (31) 237.449.

John KIMBALL

c/o Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174-0208, U.S.A. Tel.: +1 212 885.5259 - Fax: +1 917 332.3730 - E-mail: JKimball@BlankRome.com

Noboru KOBAYASHI

Professor of Law at Seikei University, 58-306 Yamashita-Cho, Naka-ku, Yokohama-Shi, 231-0023, Japan. Tel. / Fax: (45) 781.0727 - E-mail: kobayashi@law.seikei.ac.jp.

Takashi KOJIMA

Professor Emeritus of Kobe University, 2-18 Hiratacho, Ashiya City, Hyogoken, 659-0074, Japan.

Petar KRAGIĆ

Doctor of Law, President of the Croatian Maritime Law Association, Legal Counsel of Tankerska plovidba d.d., B. Petranovića 4, 23000 Zadar, Croatia.

Bernd KRÖGER

Möörkenweg 39a, 21029 Hamburg, Germany. Tel. +49 40 7242.916 - Fax: +49 40 30330.933 - E-mail: gerke@reederverband.de

Sergio LA CHINA

Avocat, Professeur à l'Université de Gênes, Président du Comité Gênais de l'Association Italienne de Droit Maritime, Via Roma 5/7, 16121 Genoa, Italy. Tel.: +39 010 541.588 - Fax: +39 010 592.851 - E-mail: sergiolachina@tin.it

Herman LANGE

Avocat, Schermersstraat 30, B-2000 Antwerpen, Belgique. Tel.: (3) 203.4310 - Fax: (3) 203.4318 - E-mail: h.lange@lange-law.be

Pierre LATRON

Président de la Chambre Arbitrale Maritime de Paris, Ancien Président de l'Association Française du Droit Maritime, 47 rue de Monceau, 75008 Paris, France. Tel.: (1) 45.62.11.88 - Fax: (1) 45.62.00.17.

Titulary Members

Alex LAUDRUP

Past President of the Danish Branch of CMI, Advokat(H)/Attorney-at-law, Hafnia Law Firm, Østergade 22, 1100 Copenhagen K, Denmark. Tel.: +45 33 34 39 00 – Dir: +45 33 34 39 08 – Mob: +45 20 40 56 02 – Fax: +45 33 36 39 20 – E-mail: al@hafnialaw.com – Web: www.hafnialaw.com

Manfred W. LECKSZAS

Advocate, partner in Ober, Kaler, Grimes & Shriver, 120 East Baltimore Street, Baltimore, Maryland 21202-1643, U.S.A. Tel.: (301) 685.1129 - Tlx: 87774 -Fax: (301) 547.0699.

Carlos R. LESMI

Lawyer, Second Vice-President of the Argentine Maritime Law Association, Partner of Lesmi & Moreno, 421 Lavalle, piso 1º, 1047 Buenos Aires, Argentina, Tel +54 11 4393 5292/5393/5991, Fax +54 11 4393 5889, Firm E-mail: lesmiymoreno@fibertel.com.ar - Private E-mail: clesmi@fibertel.com.ar

Hans LEVY

Lawyer, Langebrogade 5, DK 1411 Copenhagen K, Denmark. Tel: +45 40 156861, fax: +45 45 817700 – E-mail: hans.levy@hllaw.dk

Henry HAI LI

Senior Partner of Henry & Co. Law Firm, Vice-President of China Maritime Law Association, professor of Dalian Maritime University, c/o, Room 1418, Tower A, ICC Building, Fuhua Road 1st., Futian District, Shenzhen, PR China, 518048. Tel: +86 755 82931700, Fax: +86 755 82931800, Email: henryhaili@yahoo.com.cn

Jacques LIBOUTON

Avocat, chargé de cours à l'Université Libre de Bruxelles, Vice Président de la Licence spéciale en droit maritime et aérien de l'Université Libre de Bruxelles, c/o Gérard et Associés, Louizalaan 523, bte. 28, 1050 Bruxelles, Belgique. Tel: (2) 646.6298 - Fax: (2) 646.4017.

Domingo Martin LOPEZ SAAVEDRA

Lawyer, former Professor, First Vice-President of the Argentine Maritime Law Association, Esnaola & Vidal Raffo, San Martin 664 4º piso, 1004, Buenos Aires, Argentina. Tel.: +54 11 4515.0040/1224/1235 - Fax: +54 11 4515.0060/0022 - E-mail: domingo@lsa-abogados.com.ar

Alberto LOVERA-VIANA

Doctor of law, Lawyer and Professor, partner of Law Firm Alvarez & Lovera, Former Senator and President of the Merchant Marine Sub-Committee of the Venezuelan Senate, VMLA's Vice-President of Institutional Relationships, Av. Libertador, Multicentro Empresarial del Este, Torre Libertador, Nucleo B, Piso 15, Ofic. B-151, Chacao, Caracas 1060, Venezuela. Tel.: (58-212) 951.2106 - E-mail: alberto_Lovera@yahoo.com

Ian M. MACKAY

K.ST.J., LL.B., Master Mariner, Barrister and Solicitor. Founder Chairman of the New Zealand Branch and Former President of the Maritime Law Association of Australia and New Zealand, Chief Arbitration Commissioner for New Zealand, Chairman of the Maritime Safety Authority of New Zealand, 23A Perth Street, Ngaio, Wellington 4, New Zealand.

Eamonn A. MAGEE, LL.B.,B.L.

Barrister at Law, Marine Manager, Allianz, Insurance, Burlington Road, Dublin 4, Ireland. Tel.: (353-1) 667.0022 - Fax: (353-1) 660.8081.

Titulary Members

Ian MAITLAND

Solicitor, Partner of Wallmans Lawyers, 173 Wakefield St., Adelaide, South Australia 5000, Australia. Tel.: 08 8235 3000 - Fax: 08 8232 0926 - E-mail: Ian.Maitland@wallmans.com.au

Marcello MARESCA

Advocate, Via Bacigalupo 4/13, 16122 Genoa, Italy. Tel.: +39 010 877130 - Fax: +39 010 881529 - E-mail: m.maresca@studiomaresca.it

Mohammed MARGAOU

Vice-Président de la Chambre d'Arbitrage Maritime du Maroc, 30 Bld Mohammed V, Casablanca 01, Maroc. Tel.: (2) 271.941 - Tlx: 21969 - Fax: (2) 261.899.

David W. MARTOWSKI

President, Society of Maritime Arbitrators, Inc., 91 Central Park West, New York, NY 10023, U.S.A. Tel.: (212) 873.7875 - Fax: (212) 579.6277 - E-mail: dmartowski@verizon.net

Warren J. MARWEDEL

President of Maritime Law Association of the United States, Shareholder and President of Marwedel, Minichello & Reeb, PC, 10 South Riverside Plaza, Suite 720, Chicago, Illinois 60606, United States. Tel.: +1 212 902-1600 Ext 5054 - Fax: +1 212 902-9900 - E-mail: wmarwedel@mnr-law.com

Carlos MATHEUS-GONZALEZ

Lawyer, Matheus & Ulloa, Asocs., Vice-President VMLA, Esq. Mijares, Torre Banco Lara, p/11, Ofic. A-B, Carmelitas, Caracas Venezuela. Tel.: (58-212) 861.1142- E-mail: matheusandulloa@cantv.net

Panos MAVROYANNIS

Avocat au Barreau d'Athènes, Cour de Cassation, Secrétaire de l'Association Hellénique de Droit Maritime - Heroon Polytechniou Ave. 96, Piraeus, Greece. Tel.: (1) 451.0562 - Tlx. 212410 - Fax. (1) 453.5921.

Howard M. McCORMACK

Former President of the Maritime Law Association of the United States, Burke & Parsons, 100 Park Avenue 30FL, New York, NY 10017-5533, U.S.A. - Tel.: +1 212 354.3820 - Fax: +1 212 221.1432 - E-mail: mccormack@burkeparsons.com

Petria McDONNELL

Solicitor, McCann FitzGerald, Solicitors, 2 Harbourmaster Place, Dublin 1, Ireland. Tel.: (1) 8290 000 - Fax: (1) 8290.010 - E-mail: pmd@mccannfitzgerald.ie

Brian McGOVERN

Senior Counsel, President of the Irish Maritime Law Association Law Library Building, 158/159 Church Street, Dublin 7, Ireland. Tel.: (1) 804.5070 - Fax: (1) 804.5164 - E-mail: bjmcg@indigo.ie

J. Niall McGOVERN

Barrister-at-Law, Honorary Vice-President of the Comité Maritime International, 56 Woodview, Mount Merrion Avenue, Blackrock, Co. Dublin, Ireland. Tel: (01)210 9193 - Mobile: 087 949 2011.

Titulary Members

Fernando MEANA GREEN

Velazquez, 98, 2º dcha., Madrid 28006, Spain.

Joel R. MEDINA

Member of the Panama Bar Association, Panamanian Association of Maritime Law, Senior Partner and Director of the Shipping & Admiralty Department of the law firm of Icaza, Gonzales-Ruiz & Aleman, Aquilino de la Guardia Street No. 8, IGRA Building, P.O. Box 0823-02435 Panama, Republic of Panama - Tel.: (507) 205-6000 - Fax: (507) 269-4891 - E-mail: igranet@icazalaw.com

Ignacio L. MELO Jr.

Doctor of Law, Senior Partner of Melo & Melo Attorneys, President of the Mexican Maritime Law Association, Former President of the Iberoamerican Maritime Law Institute, General Director of the Ship Owners Agents National Association, Rio Marne No. 23, Col. Cuauhtemoc, C.P. Mexico 06500, Mexico D.F. Tel.: (5) 705.4311/705.4561 - Fax: (5) 520.7165 - E-mail: imelo@melo-melo.com.mx.

Aurelio MENENDEZ MENENDEZ

Abogado, Presidente de la Comision de Codificacion, Rama Derecho Mercantil, Catedratico de Derecho Mercantil, Uria Menendez Abogados, C/ Principe de Vergara, 187, 28002 Madrid, España. Tel.: + 34 915 860 407 - Fax: + 34 915 860 403 - E-mail: amm@uria.com

Thomas A. MENSAH

Dr., Judge of the Tribunal for the Law of the Sea, 50 Connaught Drive, London NW11 6BJ, U.K. Tel.: (20) 84583180 - Fax: (20) 84558288 - E-mail: tamensah@yahoo.co.uk

Jes Anker MIKKELSEN

Lawyer, Dragsted Schlüter Aros, 4 Raadhushpladsen, DK-1550 København V, Denmark. Tel.: (45) 77.33.77.33 - Fax: (45) 77.33.77.44
E-mail: jes.anker.mikkelsen@bechbruundragsted.com

Ljerkka MINTAS-HODAK,

Doctor of Law, The Zagreb School of Economics and Management Jordanovac 110, 10000 Zagreb, Croatia..

Massimo MORDIGLIA

Advocate, Studio Legale Mordiglia, Via XX Settembre 14/17, 16121 Genoa, Italy. Tel. +39 010 586841 – Fax: +39 010 532729 – E-mail: Massimo.Mordiglia@mordiglia.it

William. A. MOREIRA, Q.C.,

c/o Stewart McKelvey Stirling Scales, 1959 Upper Water St., P.O.Box 997, Halifax, N.S., B3J 2X2, Canada. Tel.: (902) 420.3346 - Fax: (902) 420.1417 - E-mail: wmoreira@smss.com

Hidetaka MORIYA

Lawyer, Braun Moriya Hoashi & Kubota, 505 Tokyo Sakurada Building, 1-3 Nishishinbashi, 1- Chome, Minato-ku, Tokyo 105-0003, Japan. Tel.: (81-3) 3504.0251 - Fax: (81-3) 3595.0985.

James F. MOSELEY

Former President of the Maritime Law Association of the United States, Partner Moseley, Warren, Prichard & Parrish, 501 West Bay Street, Jacksonville, Florida 32202, U.S.A. Tel.: (904) 356.1306 - Fax: (904) 354.0194 - E-mail: jfmosley@mwpplaw.com

Titulary Members

Françoise MOUSSU-ODIER (Mme)

Consultant Juridique, M.O. CONSEIL, 114, Rue du Bac, 75007 Paris, France. Tel./Fax: (1) 42.22.23.21 - E-mail: f.odier@noos.fr

The Rt. Hon. The Lord MUSTILL

Essex Court Chambers, Lincoln's Inn Fields, London WC2A 3ED, United Kingdom. Tel. (20) 7813.8000 - Fax: (20) 7813.8080 - E-mail: mustill@lingone.net

Masakazu NAKANISHI

Chief Executive Secretary of The Hull Reinsurance Pool of Japan 1997, Tokyo Average Adjusting Office Ltd., Ohmori Tokyo Kayo Bldg. (7th Floor), 1-5-1 Ohmorikita, Ohtaku, Tokyo 143-0016, Japan. Tel.: (81-3) 5493.1101 - Fax: (81-3) 5493.1108.

Peter Gad NASCHITZ

President Israel Maritime Law Association, Naschitz, Brandes & Co., 5 Tuval Street, Tel-Aviv 67897, Israel. Tel.: (3) 623.5000 - Fax: (3) 623.5005 - E-mail: pnaschitz@nblaw.com.

Bent NIELSEN

Lawyer, Nordre Strandvej 72A, DK-3000 Helsingør, Denmark. Tel.: +45 3962.8394 - Fax: +45 4057.3950 - E-mail: bn@helsinghus.dk

Helen NOBLE

Matheson Ormsby Prentice, Solicitors, 70 Sir John Rogerson's Quay, Dublin 2. Tel: +353 1 232.2535 -E-mail: helen.noble@mop.ie – website: www.mop.ie

José Angel NORIEGA PEREZ

Doctor of law, Lawyer, Partner of law firm Arosemena, Noriega & Castro, Professor of civil and commercial law at the University of Panama, Member of the Academy of Law, member of the Banking Law Insitute, former President of the Maritime Law Association, Member of the National Bar Association, of the Interamerican Bar Association and the International Bar Association. P.O. Box 5246, Panama 5, Panama.

Seiichi OCHIAI

Professor at the University of Tokyo, 6-5-2-302 Nishishinjuku, Shinjuku-ku, Tokyo 160-0023, Japan. Tel/Fax: (81-3) 3345.4010 - E-mail: sochiai@j.u-tokyo.ac.jp.

John G. O'CONNOR,

Langlois Kronström Desjardins s.e.n.c. , 300 - 801 Grande Allée West, Québec, QC G1S 1C1, Canada. Tel.: +1 418 682.1212 - Fax: +1 418 682.2272 - E-mail: john.oconnor@lkd.ca

Chris O. OGUNBANJO

Chief Chris O. Ogunbanjo, Solicitor of the Supreme Court of Nigeria, President of the Nigerian Maritime Law Association, 3 Hospital Road, Box 245, Lagos, Nigeria - E-mail: riscos@compuserve.com

Colm O'hOISIN

Barrister-at-Law, Law Library, P.O. Box 4460, Law Library Building, 158/9 Church Street, Dublin 7, Ireland. Tel.: (1) 804.5088 - Fax: (1) 804.5151.

Tsuneo OHTORI

Advocate, Emeritus Professor of the University of Tokyo, President of the Japanese Maritime Law Association, Honorary Vice-President of the Comité Maritime International, 6-2-9-503 Hongo, Bunkyo-ku, Tokyo 113, Japan.

Titulary Members

Barry A. OLAND

Barrister and Solicitor, Past President of the Canadian Maritime Law Association, Barrister & Solicitor, P.O.Box 11547, 2020 Vancouver Centre, 650 West Georgia Street, Vancouver, B.C. V6B 4N7, Canada. Tel. (604) 683.9621 - Fax: (604) 669.4556 - E-mail: shiplaw@aboland.com.

Maria Cristina de OLIVEIRA PADILHA (Mrs.)

Judge of the Maritime Court, c/o Pedro Calmon Filho & Associados, Av. Franklin Roosevelt 194/8, 20021 Rio de Janeiro, Brasil. Tel.: (21) 220.2323 - Tlx:2121606 PCFA BR.

Manuel OLIVENCIA RUIZ

Catedrático de Derecho Mercantil de la Universidad de Sevilla, Delegado de España en Uncitral, Presidente de Comité Regional de Sevilla Asociación Española de Derecho Marítimo, Paseo de la Palmera 15, 41013 Sevilla, España.

David R. OWEN

314 Brightwood Club Drive, Lutherville, Maryland 21093-3641, U.S.A.

Richard W. PALMER

Advocate, Palmer Biezup & Henderson, Former President of The Maritime Law Association of the United States, 600 Chestnut Street, Public Ledger Building, Independence Square, Philadelphia, Pennsylvania 19106, U.S.A.

Nils-Gustaf PALMGREN

Managing Director, Neptun Juridica Co. Ltd., Past President of the Finnish Maritime Law Association, Brandkärsgränden 3 G, FI-02700 Grankulla, Finland. Tel.: +358 9 505.1490 - E-mail: n-g.palmgren@kolumbus.fi

Roger PARENTHOU

Dispacheur, Secrétaire Général Honoraire du Comité des Assureurs Maritimes de Marseille, Chargé d'Enseignement aux Facultés de Droit et de Sciences Politiques d'Aix-en-Provence et de Lyon, "Le Marbella", 305B Avenue du Prado, 13008 Marseille, France. Tel.: (91) 754.320.

Robert B. PARRISH

Moseley Prichard Parrish Knight & Jones, 501 West Bay Street, Jacksonville, FL 32202, U.S.A. Tel.: +1 904-421-8436 – Fax: +1 904-421-8437 – E-mail: bparrish@mppkj.com – website: www.mppkj.com

Drago PAVIC

Doctor of Law, Professor of Maritime Law, College of Maritime Studies, Zrinskofrankopanska 38, 21000 Split, Croatia

Marko PAVLIHA

Ph.D., Head of Maritime and Transport Law Department, University of Ljubljana, Faculty of Maritime Studies and Transportation, President of the Maritime Law Association of Slovenia, Pot pomorsakov 4, SI 6320 Portorož, Slovenia. Tel.: +386 5 676.7214 - Fax: +386 5 676.7130 - Mobile: +386 41607795 - E-mail: marko.pavliha@fpp.uni-lj.si

The Honourable Justice A. I. PHILIPPIDES

Judges Chambers, Supreme Court of Queensland, 5th Floor, Law Courts Complex, George Street, Brisbane Qld 4000, Australia. Tel: +61 7 32474386 – Fax: +61 7 32217565

Titulary Members

André PIERRON

Expert Répartiteur d'Avaries Communes, Le Reuilly, 162, avenue du Président Robert Schuman, 33110 Le Bouscat, France.

Emilio PIOMBINO

Advocate and Average Adjuster, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: +39 010 562623 - Fax: +39 010 587259 - E-mail: epiombino@studiogcavallo.it

Mag. Andrej PIRŠ

c/o Faculty of Maritime Studies and Transport, Maritime Law Association of Slovenia, University of Ljubljana, Pot pomorščakov 4, 6320 Portorož, Republic of Slovenia. Tel. (66) 477.100 - Fax (66) 477.130

Vesna POLIC FOGLAR

Doctor of Law, Allianz Suisse Insurances Ltd, Transport Claims, Hohlstrasse 552, CH - 8048 Zürich, Switzerland. Tel. +41 58358.7734 - Fax +41 58358.4054 - E-mail vesna.polic@allianz-suisse.ch

Vincent Mark PRAGER

Partner of Stikeman, Elliott, 1155 Blvd. René-Lévesque W., 40th Flr., Montreal, Quebec, H3B 3V2, Canada. Tel.: (514) 397.3130 - Fax: (514) 397.3412 - E-mail: vrager@mtl.stikeman.com

Manuel QUIROGA CARMONA

Lawyer LL.M. (Southampton), member of the Executive Committee of the Peruvian Maritime Law Association, Calle Manuel Miota n° 513, San Antonio, Lima 18, Peru. Email: manuelquiroga@quiroyquiroyaabog.com

Dieter RABE

Doctor of law, Attorney at Law, CMS Hasche Sigle, Stadthausbrücke 1-3, 20355 Hamburg, Germany. Tel.: +49 40 37636343 - Fax: +49 40 37636300 - E-mail: Dieter.Rabe@cmslegal.de

Jorge M. RADOVICH

Lawyer and Full Professor of Maritime and Insurance Law, Member of the Executive Council and of the Arbitration Committee of the Argentine Association of Maritime Law, Member of the Editing Council of the Revista de Estudios Marítimos (Magazine of Maritime Studies), Partner of the Law Firm Ruggiero, Radovich & Fernández Llorente, Avda. Corrientes 545 6° Piso, C1043AAF, Buenos Aires, Argentina. Telephone: +54 11 4328.2299 - Fax: +54 11 4394.8773 - E-mail: jradovich@sealaw.com.ar

L.M.S. RAJWAR

Managing Director India Steamship Co.Ltd., 21 Hemanta Basu Sarani, Calcutta 700 001, India.

Jan RAMBERG

Professor of Law at the University of Stockholm, Honorary Vice President of the Comité Maritime International, Past President of the Swedish Maritime Law Association, Residence: Centralvägen 35, 18357 Täby, Sweden. Tel.: (8) 756.6225/756.5458 Fax: (8) 756.2460 - E-mail: jan.ramberg@intralaw.se

Titulary Members

Klaus RAMMING

Lebuhn & Puchta, Vorsetzen 35, 20459 Hamburg. Tel.: +49 40 3747780 - Fax: +49 40 364650 - E-Mail: klaus.ramming@lebuhn.de

Sigifredo RAMIREZ CARMONA

Captain-Colombian Merchant Marine, Lawyer-Admiralty law, Maritime surveyor, Lecturer at the Naval School and at the University, Carrera 15 no. 99-13, Of. 514, Bogotá, D.C. Colombia. Tel.: (1) 610.9329 - Fax: (1) 610.9379.

Uffe Lind RASMUSSEN

Head of Division Danish Shipowners' Association, Amaliegade 33, DK-1256 Kobenhavn K, Denmark. Tel.: (33) 114.088 - Fax: (33) 116.210
E-mail: ulr@danmarksrederiforening.dk

José Domingo RAY

Professor Emeritus of the Faculty of Law and Social Science of the University of Buenos Aires, Member of the National Academy of Law and Social Science, Honorary President of the Argentine Maritime Law Association, Honorary Vice-President of Comité Maritime International, 25 de Mayo 489, 5th fl., 1339 Buenos Aires, Argentina. Tel.: (11) 4311.3011 - Fax: (11) 4313.7765 - E-mail: jdray@ciudad.com.ar

Patrice REMBAUVILLE-NICOLLE

Avocat à la Cour d'Appel de Paris, Membre du Barreau de Paris, Associé/Partner de la Société d'Avocats Rembauville-Nicolle, Bureau et Michau, 4, rue de Castellane, 75008 Paris. Tel.: (1) 42.66.34.00 - Fax: (1) 42.66.35.00 - E-mail: patrice.rembauville-nicolle@rbm21.com

Thomas M. REME'

Doctor of law, Attorney at Law, Kiefernweg 9, D-22880 Wedel, Deutschland. Tel.: (49) 4103.3988 - E-mail: tundereme@t-online.de

Martine REMOND-GOUILLOUD (Mme)

Professeur de Droit Maritime et de Transport, prix de l'Académie de Marine, diplômée de l'Institut des Etudes politiques de Paris, ancien auditeur de l'Institut des Hautes Etudes de Défense Nationale, Chevalier du Mérite Maritime; 19 Rue Charles V, F-75004 Paris, France. Tel.: (1) 42.77.55.54 - Fax: (1) 42.77.55.44.

Rafael REYERO-ALVAREZ

Lawyer, postgraduate course on Shipping Law at the London University (U.C.L.), Professor of Maritime Law at the Central University of Venezuela and the Merchant Marine University of Venezuela, Vice-President of Oil Affairs of the Comité Marítimo Venezolano, García, Deffendini & Assoc., Paseo Enrique Eraso, Edif. La Noria, P.B., Oficinas 4 y 5, Las Mercedes, Caracas, Venezuela. Tel.: (58-212) 761.0230 - Email: reyerolaw@cantv.net

Francis REYNOLDS, Q.C. (Hon.), D.C.L., F.B.A.

Professor of Law Emeritus in the University of Oxford, Emeritus Fellow of Worcester College, Oxford, Honorary Professor of the International Maritime Law Institute, Malta, 61 Charlbury Rd, Oxford OX2 6UX, England. Tel.: (1865) 559323 - Fax: (1865) 511894 - E-mail: francis.reynolds@law.ox.ac.uk.

Titulary Members

Winston Edward RICE

The Seamen's Church Institute, 512 E Boston Street, Covington, LA 70433-2943, U.S.A.
Tel.: +985-893-8949 – Fax +985-893-3252 - E-mail: wrice@seamenschurch.org.

Giorgio RIGHETTI

Former Professor of Maritime Law and Judge of the Supreme Court of Cassation, Via Palestro 10/7, 16122 Genoa, Italy. Tel.: 010-8318181 – Fax: 010-8317504 – E-mail: genoa@studiolegalerighetti.it

David ROBLES

Lawyer in Admiralty and Maritime Law, Member of the Maritime Law Associations of Panama and The United States, Senior partner, Law Firm of De Castro & Robles, 9th Floor Scotia Plaza, 51st St. & Federico Boyd Ave., P.O. Box 0834-02262, Panama City, Panama. Tel.: (507) 263.6622 - Fax: (507) 263.6594 - E-mail robles@decastro-robles.com

José Luis RODRIGUEZ CARRION

University Commercial Law Professor, Master Mariner, c/o Estudios Marítimo Mercantil, Abogados, Av. Ramon de Carranza 20, 11006 Cadiz, Spain. Tel.: (56) 25.22.00 - Fax: (56) 26.16.55/25.40.16.

Jean-Serge ROHART

Avocat à la Cour, Past President of CMI, Villeneau Rohart Simon & Associés, 15 Place du Général Catroux, F-75017 Paris, France. Tel.: (1) 46.22.51.73 - Fax: (1) 47.54.90.78 - E-mail: js.rohart@villeneau.com

Ioannis ROKAS

Doctor of law, Professor at the Athens University of Economics and Business, 25 Voukourestiou Street, 10671 Athens, Greece. Tel.: (+30) 210 3616816 - Fax: (+30) 210 3615425 - E-mail: Athens@rokas.com

Roger ROLAND

Avocat, Chargé de cours de droit maritime et des transports, ainsi que d'assurances maritimes à la Faculté de Droit de l'Université d'Anvers, Directeur et rédacteur de la revue de la Jurisprudence du Port d'Anvers, Antoon van Dyckstraat 2, 2018 Antwerpen, Belgique. Tel.: +32 3 232.2017

Fernando ROMERO CARRANZA

Doctor of law, Lawyer, Professor of Navigation Law at the Faculty of Law at the National Buenos Aires University, Member of the Executive Council of the Argentine Maritime Law Association, Llerena & Asociados Abogados, Av. L.N.Alem 356, piso 13, Tel.: +54 11 4314.2670 – Fax: +54 11 4314.6080 – E-mail: frcarranza@llerena.com.ar.

Thomas S. RUE

Johnstone, Adams, Bailey, Gordon & Harris LLC, Royal St. Francis Bldg, 104 Saint Francis St. 8th Floor, Mobile, AL 36602. Tel.: +1 251 432.7682 - Fax: +1 251 432.2800
E-mail: tsr@johnstoneadams.com

Mag. Josip RUGELJ

Dantejeva 17, 6330 Piran, Republic of Slovenia.

Titulary Members

Fernando RUIZ-GALVEZ VILLAVERDE

Solicitor, Partner of the firm Ruiz-Gálvez Abogados, C/Velázquez, 20, 3º y 4º Dcha., 28001 Madrid, Spain. Tel.: (91) 781.2191 - Fax: (91) 781.2192 - E-mail: fduizgalvez@retemail.es

Richard RUTHERFORD

Adjuster of Marine Claims, 10, Glebehyrst, Sanderstead (Surrey), England.

Michael J. RYAN

Advocate, Of Counsel to Hill, Betts & Nash, LLP, One World Financial Ctr 200, Liberty Street, FL 26, New York, New York 10281-2400, U.S.A. - Tel.: (212) 589-7516 - Fax: (212) 466.0514 - E-mail: mryan@hillbetts.com

Jerry RYSANEK

Director, International Marine Policy and Liability Department of Transport, Ottawa, Ont. - Tel.: (613) 998.0708 - Fax: (613) 998.1845 - E-mail: rysanej@tc.ga.ca

José Alfredo SABATINO-PIZZOLANTE

Av. Salom, Urb. Cumboto Saur, Level 2, Ofc. 2-08/2-09, Centro Comercial Inversiones Pareca. P.O. Box 154. Puerto Cabello 2050, Edo. Carabobo, Venezuela. Tel: (58-242) 364.1801 - E-mail: mail@sabatinop.com

Yuichi SAKATA

Attorney at Law, Legal Adviser to the Japanese Shipowners' Association and Nippon Yusen Kabushiki Kaisha, 1-17-802 Shirokane, Minato-ku, Tokyo, Japan 108-0072. Tel. & Fax: (3) 5768.8767.

Ronald John SALTER

Solicitor, arbitrator & mediator, former President of the Maritime Law Association of Australia and New Zealand, consultant to DLA Phillips Fox, 140 William Street, Melbourne, Victoria 3000, Australia. Tel (3) 9274.5846 - Fax (3) 9274.5111 - E-mail: ron.salter@dlaphillipsfox.com

Fernando SANCHEZ CALERO

Abogado, Catedrático de Derecho Mercantil en la Universidad de Madrid, Anct. Président de l'Association Espagnole de Droit Maritime, Quintana, 2-2º, 28008, Madrid, Spain.

Julio SANCHEZ-VEGAS

Doctor of law, Venezuelan lawyer, Master in Maritime Insurance and Aviation, University of London, England, Professor in Maritime Law in "Rafael Urdaneta" University, "Andrés Bello" Catholic University and in the Maritime University of the Caribbean, VMLA's Vice-President Executive, AJMSV - Attorneys Office, Calle La Estancia, CCCT, Torre A, P/ 8, Of A-803, Chuao, Caracas, Venezuela, Tel. (58-212) 959.2236, E-mail: asvajm@cantv.net

Jan SANDSTRÖM

General Average Adjuster, Professor at the University of Gothenburg, former President of the Gothenburg Maritime Law Association, Nilssonsberg 16, Göteborg, Sweden. Tel.: (31) 91.22.90 - Fax. (31) 91.11.97.

Titulary Members

Ricardo SAN MARTIN PADOVANI

Lawyer and Average Adjuster, Secretary of Chilean Maritime Law Association, Prat 827
Piso 12, Valparaíso, Chile. Tel.: (32) 254.862/213.494 - Fax: (32) 252.622 - E-mail:
rsm@entelchile.net

Ricardo SARMIENTO PINEROS

President of the Asociacion Colombiana de Derecho y Estudios Maritimos, Carrera 7 No.
24-89, Oficina 1803, P.O.Box 14590, Bogotá, D.C. Colombia. Tel.: (57-1)
241.0473/241.0475 - Fax: (57-1) 241.0474 - E-mail: rsarmiento@sarmientoabogados.com

Guillermo SARMIENTO RODRIGUEZ

Doctor of law, Abogado, Founder and Honorary President of the Asociacion Colombiana de
Derecho y Estudios Maritimos, Carrera 7 No. 24-89, Oficina 1803, P.O.Box 14590, Bogotá,
D.C. Colombia. Tel.: (57-1) 241.0473/241.0475 - Fax: (57-1) 241.0474 - E-mail:
guisaroz@coll.telecom.com.co.

Nicholas G. SCORINIS

Barrister and Solicitor, The Supreme Court of Greece, Principal of Scorinis Law Offices
(est. 1969), ex Master Mariner, 67 Iroon Polytechniou Avenue, 18536 Piraeus, Greece. Tel.:
(1) 418.1818 - Fax: (1) 418.1822 - E-mail: scorinis@ath.forthnet.gr

William M. SHARPE

Barrister & Solicitor, 40 Wynford Drive, Suite 307, Toronto, ON M3C 1J5. Tel.: +1 416
482.5321 - Fax: (416) 322-2083 - E-mail: wmsharpe@eol.ca

Richard A. A. SHAW

Solicitor, former Senior Partner and now Consultant to Shaw and Croft, London EC3A
7BU; now Senior Research Fellow at the University of Southampton Institute of Maritime
Law, Southampton SO17 1BJ. Correspondence address: 24 Priors Lodge, 56 Richmond
Hill, Richmond TW10 6BB, United Kingdom. Tel.: +44 20 8241.5592 - Fax: +44 20
8711.6074 – E-mail rshaw@soton.ac.uk

Francesco SICCARDI

Lawyer, Studio Legale Siccardi, Via XX Settembre 37/6, 16121 Genoa, Italy. Tel.: +39 010
543.951 - Fax: +39 010 564.614 - E-mail: f.siccardi@siccardibregante.it

Patrick SIMON

Avocat à la Cour, SCP Villeneuve Rohart Simon & Associés, 15 Place du Général Catroux,
75017 Paris, France. Tel.: (1) 46.22.51.73 - Fax: (1) 47.54.90.78 - E-mail:
p.simon@villeneuve.com

Gabriel R. SOSA III

De Castro & Robles, Scotia Plaza, 51st & Federico Boyd Streets, P.O.Box 0834-02262,
Panama, Republic of Panama. Tel.: (+507) 263.6622 - Fax (+507) 263.6594 - E-mail:
sosa@decastro-robles.com www.decastro-robles.com

Graydon S. STARING

Former President of the Maritime Law Association of the United States, Nixon Peabody
LLP, One Embarcadero Center, Floor 18, San Francisco, Ca. 94111, U.S.A. Tel.: (415)
984.8310 - Fax: (415) 984.8300 - E-mail: gstaring@nixonpeabody.com

Titulary Members

Arthur J. STONE

The Hon. Mr. Justice Stone, Judge, Federal Court of Appeal, 934 Sadler Crescent, Ottawa, Ontario, Canada K2B 5H7. Tel.: (613) 596.0587

Tova STRASSBERG-COHEN

Judge, President of the Israel Maritime Law Association, Supreme Court, Jerusalem, Israel. Tel.: (2) 759.7171.

Michael F. STURLEY

Professor, University of Texas Law School, 727 East Dean Keeton Street, Austin, Texas 78705-3224, U.S.A. Tel.: (1-512) 232.1350 - Fax: (1-512) 471.6988 - E-mail: msturley@mail.law.utexas.edu

Akira TAKAKUWA

Professor of Law at Kyoto University, 24-4 Kichijoji-minamicho 4-chome, Musashino-shi, Tokyo 180-0003, Japan. Tel.: (81-4) 2249.2467 - Fax: (81-4) 2249.0204.

Haydee S. TALAVERA (Mrs.)

Doctor of law, Lawyer, Professor of Navigation Law, Faculty of Law at the National Buenos-Aires University and La Plata University, Carbajal 3636, C 1430 CBD, Buenos Aires, Argentina. Tel.: +54 11 4555.5172/5287 - Fax: +54 11 4555.5287/4373.5103 E-mail: giovannablangiardi@speedy.com.ar.

Hisashi TANIKAWA, Ph. D.

Emeritus Professor of Seikei University, Vice President of the Japanese Maritime Law Association, Honorary Vice President of the CMI, c/o Japan Energy Law Institute, Tanakayama Bldg., 7F, 4-1-20, Toranomon Minato-ku, Tokyo 105-0001, Japan. Tel.: (3) 3434.7701 - Fax: (3) 3434.7703 - E-mail: y-okuma@jeli.gr.jp

Yves TASSEL

Professeur à l'Université de Nantes, Directeur du Centre de droit maritime, Conseiller juridique du Droit Maritime Français, 16 bis rue Alexandre Dumas, 44000 NANTES, France

David W. TAYLOR

International Underwriting Association, London Underwriting Centre, 3 Minster Court, London EC3R 7DD, England. Tel.: (44-207) 617.4453 - Fax: (44-207) 617.4440 - E-mail: david.taylor@iua.co.uk

William TETLEY Q.C.

Faculty of Law, McGill University, 3644 Peel Street, Montreal, Quebec H3A 1W9, Canada. Tel.: (514) 398.6619 - Fax: (514) 398.4659 - E-mail: william.tetley@mcgill.ca - Website: <http://tetley.law.mcgill.ca>

Henrik THAL JANTZEN

Lawyer, the law firm Kromann Reumert, Bredgade 26, 1260 Kobenhavn K., Denmark. Tel.: (33) 933.960 - Fax: (33) 933.950 - E-mail: htj@kromannreumert.com

Jan THEUNIS

Theunis & D'Hoine, Attorneys-at-law, Verbindingsdok-Oostkaai 13, 2000 Antwerpen, Belgium. Tel.: +32 3 470.2300 - Fax: +32 3 470.2310 - E-mail: jan.theunis@diurna.be

Titulary Members

Alain TINAYRE

Avocat, Ancien Membre du Conseil de l'Ordre, 43 rue de Courcelles, 75008 Paris, France.
Tel.: (1) 53.75.00.43 - Fax: (1) 53.75.00.42.

Shûzo TODA

Emeritus Professor of the University of Chûo, 9-15, 2 chome. Sakurazutsumi, Musashino-Shi, Tokyo, Japan.

Lionel TRICOT

Avocat, Ancien Président de l'Association Belge de Droit Maritime, Professeur Extraordinaire Emérite à la Katholieke Universiteit Leuven, Professeur Emérite à UFSIA-Anvers, Italiëlei 108, B-2000 Antwerpen 1, Belgique. Tel.: (3) 233.2766 - Fax: (3) 231.3675.

Sergio TURCI

Lawyer, Studio Legale Turci, Via R. Ceccardi 4/30, 16121 Genoa, Italy. Tel.: +39 010 553.5250 - Fax: +39 010 595.414 - E-mail: turcilex@turcilex.it

Wagner ULLOA-FERRER

Lawyer, Past-President Asociacion Venezolana de Derecho Maritimo, Torre Banco Lara, piso 11. Ofic.A-B, Esquina de Mijares, Carmelitas, Caracas, Venezuela. Tel.: (58-212) 861.1142 - E-mail: matheusandulloa@cantv.net

Anders ULRIK

Barrister, Deputy Director, Assuranceforeningen Skuld and Danish Shipowners' Defense Association, Frederiksborggade 15, 1360 København K., Denmark. Tel.: (33) 116.861 - Fax: (33) 113.341 - E-mail anders.ulrik@skuld.com

Percy URDAY BERENGUEL

Doctor of law, Lawyer LL.M. (London), Calle Chacarilla no. 485, San Isidro, Lima 27, Perú. Tel.: (51) 14224.101 - Fax: (51) 14401.246 - E-mail: purday@murdayab.com

Rodrigo URIA GONZALEZ

Avocat, Catedratico de Derecho Mercantil, C/Jorge Juan 6, 28001 Madrid, Spain.

Jozef VAN DEN HEUVEL

Ancien Bâtonnier et avocat, Professeur Extraordinaire: Vrije Universiteit Brussel, Professeur au RUCA Antwerpen, Frankrijklei 117, B-2000 Antwerpen 1, Belgique.

Taco VAN DER VALK

Advocaat, AKD Prinsen Van Wijmen, P.O.Box 4302, 3006 AH Rotterdam, The Netherlands. Tel.: +31 88 253.5404 - Fax: +31 88 253.5430 - E-mail: tvandervalk@akd.nl

Gertjan VAN DER ZIEL

Professor of Transportation Law, President of the Netherlands Maritime Law Association, Doornstraat 23, 3151 VA Hoek van Holland, Netherlands. Tel.: (174) 384.997 - Fax: (174) 387.146 - E-mail: vanderziel@xs4all.nl.

Eric VAN HOOYDONK

Advocate, Professor of Maritime Law and Law of the Sea at the University of Antwerp, Chairman of the European Institute of Maritime and Transport Law, Emiel Banningstraat 21-23, B-2000 Antwerp, Belgium. Tel. +32 3 238.6714 - Fax: +32 3 248.8863 - E-mail: eric.vanhooydonk@skynet.be

Titulary Members

Alan VAN PRAAG

Eaton & Van Winkle LLP, 3 Park Ave Floor 16, New York, NY, 10016-2078, U.S.A. Tel.: +1 212 5613609 – Fax: +1 212 7799928 – E-mail avanpraag@evw.com – Website: www.evw.com

Antoine VIALARD

Professeur de Droit Maritime à la Faculté de Droit, des Sciences Sociales et Politiques de l'Université de Bordeaux, Avenue Léon-Duguit, 33600 Pessac, France. Tel.: +33 524 60.67.72 - Fax: +33 5 56.84.29.55 - E-mail: aevialard@numericable.fr

Ricardo VIGIL TOLEDO

LL.M., (London) Advocate, Past President of the Peruvian Maritime Law Association, Former Chief of Maritime Legislations, UNCTAD, Mariscal Miller 2554, Lima 14, Perú. Tel.: (51-1) 422.3551 - Fax (51-1) 222.5496 - E-mail: vigiltoledo@msn.com

Michael VILLADSEN

Lawyer, Advokaterne, Dalgas Avenue 42, DK-8000 Aarhus, Denmark. Tel.: (86) 121.999 – Fax: (86) 121.925 – E-mail: mv@rodstenen.dk

Francisco VILLARROEL-RODRÍGUEZ

Villarroel, Rodríguez & Asociados - Abogados. Av. Universidad, Centro Empresarial, Piso 10, Oficina 10-C, Caracas 1010, Venezuela. Tel.: (58-212) 952.6228 - E-mail: venezuelanlaw@cantv.net

Henri VOET Jr.

Docteur en Droit, Dispatcheur, Henry Voet-Genicot, Kipdorp, 53,2000, Antwerpen 1, Belgique. Tel.: (3) 218.7464 - Fax: (3) 218.6721.

Kenneth H. VOLK

Lawyer, Past President of the MLA of the United States, Partner in McLane, Graf, Raulerson & Middleton, 39 Gates Street, Portsmouth, NH 03801, U.S.A. Tel.: (603) 436.2818 - Fax: (603) 436.5672 - E-mail: kenneth.volk@mclane.com.

Enzio VOLLI

Professeur de droit maritime, Président du Comité de Trieste de l'Association Italienne de Droit Maritime, Via S. Nicolò 30, 34131 Trieste, Italie. Tel.: +39 040 638.384 - Fax: +39 040 360.263 - E-mail: segreteria@studiovolli.it

Alexander von ZIEGLER

Associate Professor (Privatdozent) at the University of Zurich, Doctor of Law, LL.M. in Admiralty (Tulane), Attorney at Law, President of the Swiss Maritime Law Association, Partner of Schellenberg Wittmer, Löwenstrasse 19, Postfach 1876, CH-8021 Zürich, Suisse. Tel.: +41 44 215.5252 - Fax: +41 44 215.5200 - E-mail: alexander.vonziegler@swlegal.ch

D. J. Lloyd WATKINS

Barrister, Ty Nant, Cwm Farm Lane, Sketty, Swansea SA2 9AU, England

Francisco WEIL

Average Adjuster and Honorary Treasurer of the Executive Council of the Argentine Maritime Law Association, c/o Ascoli & Weil, Juan D. Peron 328, 4th Fl., 1038 Buenos-Aires, Argentina. Tel.: (1) 342.0081/3 - Fax: (1) 361.7150 - E-mail: ascoliweil@weil.com.ar

Titulary Members

Peter WILLIS LL. B.

Former President of The Maritime Law Association of Australia & New Zealand, Solicitor, 35 Thornton Street, KEW. 3101, Australia. Tel.: 861.9828.

Frank L. WISWALL, Jr.

J.D., Ph.D.jur. (Cantab) of the Bars of Maine, New York and the U.S. Supreme Court, Attorney and Counselor at Law, Proctor and Advocate in Admiralty, former Chairman of the IMO Legal Committee, Professor at the World Maritime University, the IMO International Maritime Law Institute and the Maine Maritime Academy, Meadow Farm, 851 Castine Road, Castine, Maine 04421-0201, U.S.A. Tel.: (207) 326.9460 - Fax: (202) 572.8279 - E-mail: FLW@Silver-Oar.com

Akihiko YAMAMICHI

Attorney at Law, Member of the Japanese Maritime Arbitration, Senior Partner Yamamichi & Uono, 2-10-22, Kugenuma Sakuragaoku, Fujisawa, Kanagawaken, Japan.

Tomonobu YAMASHITA

Professor of Law at the University of Tokyo, Sekimae 5-6-11, Musashinoshi, Tokyo 180-0014, Japan. E-mail: yamashita@j.u-tokyo.ac.jp.

Stefano ZUNARELLI

Advocate, Professor of maritime law at the University of Bologna, Via del Monte 10, 40126 Bologna, Italy. Tel.: +39 051 7457221 – Fax: +39 051 7457222 – E-mail: stefano.zunarelli@studiozunarelli.com

CONSULTATIVE MEMBERS

Intergovernmental Organizations

INTERNATIONAL MARITIME ORGANIZATION – IMO

Dr. Rosalie P. Balkin
Legal & External Relations Division
4 Albert Embankment
London SE1 7SR, United Kingdom
E-mail: rbalkin@imo.org

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS – IOPC Funds

Mr. Willem Oosterveen, Director
23rd Floor, Portland House, Bressenden Place
London SW1E 5PN, United Kingdom
E-mail: info@iopcfund.org

Other International Organizations

ARAB SOCIETY OF MARITIME AND COMMERCIAL LAW

C/o Dr. Nader Ibrahim
College of International Transport and Logistecs
Arab Academy for Science, Technology and Marine Transport
PO Box 1029
Alexandria, Egypt
E-mail: nader.ibrahim@yahoo.com

BALTIC AND INTERNATIONAL MARITIME CONFERENCE – BIMCO

Mr. Truls W. L'orange, Secretary General
Bagsvaerdvej 161
DK-2880 Bagsvaerd, Denmark
E-mail: sl@bimco.dk

INDEPENDENT TANKER OWNERS POLLUTION FEDERATION – ITOPF

Mr. Tosh Moller, Managing Director
1 Oliver's Yard
55 City Road
London EC1Y 1HQ, United Kingdom
E-mail: toshmoller@itopf.com
www.itopf.com

Consultative Members

INSTITUTO IBEROAMERICANO DE DERECHO MARITIMO – IIDM
Presidency

Río Negro 1394, esc. 504. Montevideo, Uruguay.

Tel. +598 2 901 2552 - Fax +598 2 902 5137

E-mail: iidmuruguay@adinet.com.uy

Website: www.iidmaritimo.org

President: Dr. Julio Vidal Amodeo

Executive Secretary: Dra. Victoria Zorrilla Ferrés

Treasurer: Cra. Andrea Lanfranco

Administrative Office of the IIDM

Paraná 489, piso 9, oficina 55 (1017)

Buenos Aires, Argentina

Tel./fax +54 11 4371 7854

Email: iidm@itcom.com.ar

Website: www.iidmaritimo.org

Administrative Secretary: Lic. Andrés D'Eramo

INTERNATIONAL ASSOCIATION OF DRY CARGO SHIPOWNERS – INTERCARGO

Attn. Mr. Rob Lomas, Managing Director

9th Floor, St. Clare House

30-33 Minories

London EC3N 1DD, United Kingdom

E-mail: rob.lomas@intercargoo.org

INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS – INTERTANKO

P.O.Box 761 Sentrum

N-0106 Oslo, Norway

E-mail: oslo@intertanko.com

INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS – IAPH

Mr. Susumu Naruse, Secretary General

7th Floor, South Tower, New Pier Takeshiba, 1-16-1 Kaigan, Minato-ku

Tokyo 105-0022, Japan

E-mail: info@iaphworldports.org

INTERNATIONAL ASSOCIATION THE RHINE SHIPS REGISTER - IVR

Vasteland 12E - 3011 BL Rotterdam

Postbus 23210

3001 KE Rotterdam

Tel: +31 (0)10 411 60 70 - Fax: +31 (0)10 412 90 91

E-mail: info@ivr.nl – www.ivr.nl

INTERNATIONAL BAR ASSOCIATION – IBA

10th Floor, 1 Stephen Street - London W1T 1AT, United Kingdom

E-mail: iba@int-bar.org

INTERNATIONAL CHAMBER OF COMMERCE – ICC

Mr. Jean Rozwadowski, Secretary General

Maritime and Surface Transport Division

38 Cours Albert 1er - F-75008 Paris, France

E-mail: jri@iccwbo.org

Consultative Members

INTERNATIONAL CHAMBER OF SHIPPING – ICS

Tony Mason, Secretary General
Carthusian Court
12 Carthusian Street
London EC1M 6EB, United Kingdom
E-mail: Tony.Mason@marisec.org

INTERNATIONAL FEDERATION OF FREIGHT FORWARDERS' ASSOCIATION – FIATA

Mr. William M. Gottlieb, President
Schaffhauserstr. 104
P.O.Box 364
CH-8152 Glattbrugg, Switzerland
E-mail: info@fiata.com

INTERNATIONAL GROUP OF P&I CLUBS

Mr. Andrew Bardot, Secretary and Executive Officer
Peek House - 20 Eastcheap
London EC3M 1EB, United Kingdom
E-mail: Andrew.Bardot@InternationalGroup.org.uk

INTERNATIONAL MARITIME INDUSTRIES FORUM – IMIF

C/o The Baltic Exchange
38 St. Mary Ave
London EC3A 8BH, United Kingdom
E-mail: imif@btconnect.com

INTERNATIONAL UNION OF MARINE INSURANCE – IUMI

Attn. Mr. Fritz Stabinger, Secretary General
C.F. Meyer-Strasse 14
P.O.Box 4288
CH-8022 Zürich, Switzerland
E-mail: fritz.stabinger@sw.ch

PACIFIC INTERNATIONAL MARITIME LAW ASSOCIATION – (PIMLA)

c/o Economic Development Division - Transport
Secretariat of the Pacific Community
Private Mail Bag
Suva, Fiji Islands
Attention: Tufuga Fagaloa Tufuga, Secretary/Treasurer
Email: fagaloat@spc.int or tufuga.fagaloa@gmail.com

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE – NITL

Mr. Bruce Carlton, President
1700 North Moore St. - Suite 1900
Arlington, Virginia 22209, U.S.A.
E-mail: carlton@nitl.org

WORLD SHIPPING COUNCIL – WSC

Christopher Koch, President
1156 15th St. N.W. - Suite 300
Washington, D.C. 20005, U.S.A.
E-mail: ckoch@worldshipping.org

PART II

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REPORT ON THE COLLOQUIUM AT BUENOS AIRES

NIGEL FRAWLEY

1. Introduction

At the time of the Rotterdam Assembly in September 2009, the MLA of Argentina offered to host the next Colloquium. This was enthusiastically received by the Executive Council and October 2010 was agreed. Planning and organizational details got underway in earnest in early 2010. 233 delegates (including speakers), 66 accompanying persons and 37 young members registered for the event, which was held in the famous Marriott Plaza Hotel in Buenos Aires.

2. The Substantive Programme

The programme included Panels on (1) Whether the Salvage Convention, 1989 adequately encourages protection of the environment, (2) Recognition of Foreign Judicial Sales of Ships, and (3) the Rotterdam Rules. Papers were also given on the Centenary of the Collision Convention, 1910, Piracy Today, Legal regimes in the Arctic and Antarctic, and Harmonization of the Pollution Schemes of the countries related to the Hidrovia Paraguay-Parana.

The Young Members had their own substantive programme one afternoon which included speeches on the Widening of the Panama Canal, P&I Insurance, Concerns relating to environmental laws covering offshore platforms, and the Rotterdam Rules.

3. Social programme

The AMLA organized a wonderful social programme for all delegates and accompanying persons including an opening reception in the Plaza Hotel complete with the Mora Godoy Tango Show, a cruise to the famous El Gato Restaurant for luncheon, and a gala dinner at the Puerto Modero Yacht Club. Young Members organized a night on the town for themselves. It is now confirmed from photographic evidence that a few Old Members joined them. Accompanying persons were taken on tours of the City and a Gaucho Party. Many delegates took advantage of pre and post colloquium tours and

Report on the Colloquium at Buenos Aires, by Nigel Frawley

excursions to various locations in Argentina, in particular Iguazu Falls. It is also rumoured that some delegates took Tango lessons.

4. *Conclusion*

Special thanks are due to Alberto Cappagli, President, Jorge Radovich, Secretary, and Pedro Browne, Treasurer, of the AMLA and their Organizing Committee for putting on a highly successful Colloquium. The CMI is particularly pleased with the enthusiasm of the South American delegates for the CMI and its work.

We are also grateful for the hard work of Violeta Radovich and Iannis Timagenis organizing the highly successful substantive and social programme for Young Members.

ROTTERDAM RULES

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QUESTIONS AND ANSWERS ON THE ROTTERDAM RULES

**BY THE
CMI INTERNATIONAL WORKING GROUP
ON THE ROTTERDAM RULES**

Preface

On December 11, 2008, during its 63rd session, the UN General Assembly adopted the “United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules).” The Convention became open for signature at the signing ceremony in Rotterdam on September 23, 2009.

Comité Maritime International, which has been involved in the process of drafting the Rotterdam Rules from the early stages, endorsed the Rotterdam Rules (then “the Draft Convention”) at its 39th Conference in Athens. Taking into account the practical and historical importance of the new regime for the international carriage of goods, the Executive Council decided that the CMI would continue to monitor the adoption and implementation of Rotterdam Rules, and established an international working group on the Rotterdam Rules for this purpose.

The Rotterdam Rules consist of 96 articles that were drafted carefully and deliberately. Because of their highly technical nature and their comprehensive coverage of the relevant issues, those who first read these rules might need some help to properly understand as to how the Rules work and what they achieve.

The International Working Group on the Rotterdam Rules thought it would benefit all involved if it were to make a “Questions and Answers” list that coincides with the Signing Ceremony and clarifies commonly asked questions and corrects occasional misunderstandings that arise. It should be noted that the intent of these “Q&As” are not to evaluate the Rotterdam

Questions and answers on the Rotterdam Rules

Rules' pros and cons, nor to persuade governments to ratify them. The sole purpose is to offer guidance for an easy and correct understanding of the Rules.

We hope that the "Q&As" will help the readers of Rotterdam Rules.

October 10, 2009

International Working Group on the Rotterdam Rules
 TOMOTAKA FUJITA, Chairman (Japan)
 JOSÉ TOMAS GUZMAN (Chile)
 STUART BEARE (the U.K.)
 GERTJAN VAN DER ZIEL (the Netherlands)
 PHILIPPE DELEBECQUE (France)
 KOFI MBIAH (Ghana)
 HANNU HONKA (Finland)
 BARRY OLAND (Canada)

QUESTIONS AND ANSWERS ON THE ROTTERDAM RULES

A. Scope of Application, Persons Covered by the Convention, and the Multimodal Aspect

< Scope of Application >

1. Do the Rotterdam Rules apply to individual shipments under booking contracts of slot charterers, space charterers in liner or non-liner transportation? Do the Rotterdam Rules apply to individual shipments under long term contracts with NVOCs?

The application of the Rules should be determined when specific contract terms are filled in to the general conditions.

If individual shipments under booking contracts or long term contracts are performed in a non-liner transportation, the Rotterdam Rules do not apply either to the terms of the booking contracts or the long term contracts or to the terms of individual shipments (article 6(2)) unless they do not qualify as "on demand carriage" (article 6(2)(b)).

If individual shipments are performed in a liner service and if they are not charterparties or other contracts for the use of a ship or of any space thereon, the Rotterdam Rules apply to the terms of individual shipments and the terms contained in the booking contracts, or long term contracts to the extent that they are applicable to the individual shipments.

2. *What is the intention of the proviso of article 6(2)? Does article 7 not also make the Rotterdam Rules apply when a transport document or an electronic transport record is issued?*

The chapeau of article 6(2) excludes contracts of carriage in non-linear transportation. However, there is a case where the exclusion of non-linear transportation also excludes a type of contract that has been covered by the Hague and the Hague-Visby Rules. This type of contract is sometimes called “on demand” carriage, to which the proviso of Article 6(2) refers as follows: “When (a) there is no charterparty or other contract between the parties for the use of a ship or of any space thereon; and (b) a transport document or an electronic transport record is issued”.

An example can illustrate this exception. Assume the following arrangements: Several shippers bring their cars for carriage to the port of loading. When the number of cars reaches a certain level, the ship departs for its destination. While the route is fixed, the schedule is not. Bills of lading are issued for this carriage. This contract is covered by the Hague or the Hague-Visby Rules because bills of lading are issued under the contract and it is not a charterparty. The proviso of Article 6(2) reintroduces this type of contract for non-linear transportation into the Rules’ scope of application.

It should be noted that the Rotterdam Rules apply only as between the carrier and the consignee, controlling party or holder that is not an original party under article 7. In contrast, if a contract of carriage falls under the category of article 6(2), the Rules also apply between the carrier and the shippers. The additional precision of Article 6(2) is needed to maintain the status quo under the Hague, the Hague-Visby or the Hamburg Rules (i.e., the regulation applies even as between original parties) and article 7 alone is not sufficient to do this.

3. *Is it correct that the Rotterdam Rules apply in a situation where a transport document is endorsed to a third party, pursuant to article 7, but they would not apply under Article 6, as between the carrier and the shipper?*

Yes. The same applies under the Hague and the Hague-Visby Rules or the Hamburg Rules.

<Door to Door Application >

4. *Is it possible to agree on traditional “tackle-to-tackle” or “port-to-port” contract of carriage under the Rotterdam Rules?*

Although it is often mentioned that the Rotterdam Rules adopt the “door-to-door” principle, it should be noted that the carrier’s period of responsibility

depends on the terms of the contract and that nothing in the Convention prohibits the parties from entering into a traditional “tackle-to-tackle” or “port-to-port” contract of carriage. Article 12(3) explicitly allows the parties to agree on the time and location of the receipt and delivery of the goods. The only restriction is the proviso in Article 12(3) that the time of receipt of the goods cannot be after the beginning of their initial loading, and the time of delivery of the goods cannot be before the completion of their final unloading. Therefore, it is perfectly possible for the parties, for instance, to enter into a traditional “port-to-port” contract of carriage in which the shipper delivers the goods to the container yard of the port of loading, and the carrier unloads them at the container yard of the port of discharge, with the carrier only responsible for the carriage between the two container yards.

5. *How do the Rotterdam Rules apply to total door-to-door transport? Do the Rules regulate the liability of the carrier who may not necessarily be responsible for a certain part of the transport?*

The Rotterdam Rules apply to “door to door transport” only if the parties agree that the carrier assumes the responsibility for the whole part of the transport, including land legs. Nothing in the Rotterdam Rules prevent parties from entering into a pure maritime contract (“port to port” or even “tackle to tackle”) and the only restriction is article 12(3). See, also *Question 4*.

6. *How are the possible conflicts with other conventions solved under the Rotterdam Rules?*

Article 26, introducing the “limited network rule”, mostly removes the possible conflict with other Conventions, such as CMR or COTIF-CIM. Article 82 provides the safeguard for a contracting state to other conventions to the extent that such conventions apply to the sea carriage.

7. *Why do the Rotterdam Rules not adopt a uniform system instead of a limited network system?*

Although the “network system” and the “uniform system” look entirely incompatible, each system is usually modified so that the difference is not as large as it appears. For example, any network system should be supplemented by a rule that governs the carrier’s liability when it is impossible to determine where the damage occurred (UNCTAD/ICC Rules article 6.1-6.3 apply the limitation amount of Hague-Visby Rules when the damage is not localized, as far as the contract in question contains a sea-leg.). The “uniform system” is often modified to allow the application of the mandatory liability rule that governs the corresponding transport mode, as far as the place where damage occurs is identified (See, article 19 of UN Multimodal Convention).

The difference would be whether to adopt a unique limitation amount, totally independent of each legal regime that is applicable to each transport mode. In this regard, the Rotterdam Rules do not offer a “unique” limitation amount but apply a limitation amount applicable to sea carriage unless a different limitation applies pursuant to article 26 or article 82. This is the natural consequence of the fact that the UNCITRAL Project has always been understood as a modernization of the legal regime of the carriage of goods by sea (or a “maritime plus” approach), rather than of the pure multimodal transport.

8. *Why did the Rotterdam Rules not adopt a full network system rather than a limited network system?*

A full network system, which applies every term of other conventions when the loss, damage, or delay is “localized” in a particular stage of carriage to which such conventions are applicable, was thought to be too modest an approach to achieve sufficient uniformity. One consistent and coherent regime should govern each stage of multimodal transport to as great an extent as possible.

9. *Why do the Rotterdam Rules not include mandatory national law in their network system?*

If the most important function in introducing a “limited network system” is to avoid conflict of conventions, there is no need to include mandatory national law in article 26. Further, the inclusion of mandatory national law would greatly reduce transparency, predictability and overall uniformity.

<Performing Parties>

10. *Do freight forwarders fall within the definition of “maritime performing party” so that they are subject to the Rotterdam Rules?*

Freight forwarders play various roles in connection with the contract of carriage. The Rotterdam Rules apply to some of these and not to others. The application of the Rotterdam Rules is decided depending on how they are involved in a specific contract of carriage.

If, for instance, a freight forwarder undertakes to carry the goods to its customer, it is a carrier under the Rotterdam Rules. If a freight forwarder enters into a contract with a sub-carrier in its own name, it is a shipper under the Rotterdam Rules. If a freight forwarder enters into a contract with a carrier on behalf of a customer (as an agent), it is not the carrier or the shipper under the Rotterdam Rules and is not liable as such. It is also not a “maritime performing party” unless it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a

ship, and, in respect of freight forwarders acting as inland carriers, only if the services performed are done exclusively within the port area.

When a freight forwarder provides services as a stevedore, for instance, one should be careful which relationship one focuses on. As regards the contractual relationship between the freight forwarders (acting as stevedores) and the carrier, the contractual relationship is not affected by the Rotterdam Rules because they do not apply to the contract between the carrier and the maritime performing party, unless that contract satisfies the definition of “contract of carriage” (article 1(1)) (this is apparently not the case here). As regards the forwarder’s relationship with the shipper or consignee, the Rotterdam Rules make the carrier and the maritime performing party jointly liable towards the shipper and consignee. The fact that the freight forwarder, acting as a maritime performing party, is subject to the Rotterdam Rules would probably constitute an advantage rather than a disadvantage, because it guarantees that the freight forwarders enjoy defences including the short time-bar and the right of limitation of its liability. At present, irrespective of the contractual terms, in cases where it may be sued in tort, it would be liable without limitation.

11. *Is it possible for the parties to give the persons who are not covered by article 4(1) the same defense and exoneration as the carrier via “Himalaya” clause? Does it constitute a “term in a contract of carriage” that “directly or indirectly excludes or limits the obligations of the carrier” which is void pursuant to article 79(1)?*

Nothing in the Rotterdam Rules prevent the parties of the contract of carriage from agreeing on a “Himalaya clause” for the benefit of non-maritime performing parties or other persons who are not covered by article 4(1). The Rotterdam Rules leave the issue of liability of such persons including the validity of the “Himalaya clause” to national law and the issue is outside the scope of article 79.

B. Carrier’s Obligations, Period of Responsibility and Liabilities

<Period of responsibility>

1. *Is it possible for the carrier to limit their period of responsibility by contract?*

First, the carrier cannot unilaterally limit the period of responsibility. This should be agreed in the contract of carriage. Second, there is a restriction for contractual agreement to avoid its misuse. A provision in a contract of carriage is void to the extent that it provides that (a) the time of receipt of the goods is subsequent to the beginning of their initial loading under the contract

of carriage or (b) the time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage. (article 12(3))

2. *Article 12(3)(a) states that the time of receipt of the goods cannot be defined to be after “their initial loading under the contract of carriage”. What is “initial loading under the contract of carriage”? Can it mean “alongside the vessel”, i.e. tackle to tackle, as in the current Hague-Visby Rules, because Article 12(3)(a) uses the term “initial loading”, not “initial receipt”?*

“Initial loading under the contract of carriage” means loading on the first means of transportation, which could be a ship, a truck, a train, or even an aircraft. If the only means of transport used in the contract of carriage in question is a ship, article 12(3), in substance, means that the parties cannot agree on a contract of carriage with a period of responsibility that is shorter than “tackle to tackle”.

If the parties enter into a contract for “door to door transportation,” which includes road carriage from the shipper’s factory, it is impossible to agree on a period of responsibility that begins after the loading onto the truck, which is “the initial loading of the goods under the contract of carriage”.

3. *Will the carrier be able to limit its specific obligations under the contract of carriage under FIO clause? Is it correct that the carrier’s responsibility for loading, handling, stowing and unloading of the goods would be eliminated by terms of Article 3(2) if the shipper assumed “legal responsibility for load, handle, stow, and unload”?*

Yes, but *only if* the carrier and the shipper agree on the FIO clause and *only to the extent* that the shipper assumes the obligation of performing the loading, handling, stowage and unloading of the goods. Such an arrangement would be beneficial for the shipper, for example, in cases where such goods require special treatment, or where the shipper has specialized equipment necessary to handle the goods. Unfortunately, the jurisprudence on the FIO clause has varied among jurisdictions and there is uncertainty for its validity. Article 13(2), providing for the legal underpinning for FIO clauses, is intended to assist the parties when they desire to use them. On the other hand, article 13(2), enumerating the task of which the shipper can assume responsibility, restricts the extent to which the FIO clause are effective and thereby prevents its misuse of the FIO clause.

4. *May the parties stipulate in the transport document that the legal responsibility for loading, handling, stowing and unloading of the goods is placed upon the shipper, but that the carrier, as agent of the shipper, would perform those tasks?*

Questions and answers on the Rotterdam Rules

The parties may agree that the carrier, as agent of the shipper, would perform loading, handling, stowing, or unloading under FIO clauses. However, in such a case, the carrier cannot rely on the exoneration under article 17(3)(i).

Article 17(3)(i) explicitly provides:

“The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

...

(i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, *unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee.*” (Emphasis added).

<Carrier’s Obligation>

5. ***Article 11 provides that “the carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee”. In addition to terms set out in the Convention, is the carrier free to include other terms in the contract of carriage that are outside the Convention? If so, what type of terms would possibly be included?***

The carrier and the shipper are free to incorporate any terms that are not restricted by the Rotterdam Rules. The payment of freight, time of delivery, laytime and demurrage, or options to change port of destination are examples of such terms. The parties can also insert a liberty clause such as “Caspiana” or “war clause” which would permit the carrier to discharge the goods at a different place than original destination under certain exceptional circumstances. These clauses can be interpreted as providing an alternative destination which can be chosen under certain circumstances and should not be automatically invalidated as derogation from the carrier’s obligation under article 11.

6. ***Article 14 appears to replicate Article III(1) of the Hague-Visby Rules.***
- (1) How does Article 14 relate to Article 17?***
 - (2) What is the consequence if due diligence is not exercised?***
 - (3) Who has the burden of proof of due diligence?***
 - (4) Should the carrier prove that it had exercised due diligence before being able to rely on the relief of liability provisions Articles 17(2) and (3)?***
 - (5) Who has the burden of proof of unseaworthiness, etc.?***

(1) When the carrier relies for exoneration on an event or circumstance under article 17(3), the claimant can defeat it by proving that the loss or damage was “probably caused” by unseaworthiness, pursuant to article 17(5)(a), although the carrier may still prove that there is no causation between unseaworthiness and the loss, damage or delay, or that it exercised due diligence (article 17(5)(b)). One should note that, under the Rotterdam Rules, the due diligence obligation to make and keep the ship seaworthy only plays a role in connection with the case in which the carrier relies on the exoneration under article 17(3).

(2) The failure to exercise due diligence is a breach of the obligations of the carrier. If such breach caused or contributed to the loss of or damage to the goods or the delay in delivery, the carrier loses its defence pursuant to article 17(3).

(3) The carrier bears the burden of proof of due diligence. See (1), above.

(4) No. See (1), above. The exercise of due diligence matters only if the claimant proves the loss or damage was “probably caused” by unseaworthiness, pursuant to article 17(5)(a). The Rotterdam Rules explicitly rejected the idea of the “overriding obligation” of the carrier, which is adopted in some jurisdictions.

(5) Article 17(5) provides that the claimant must prove that the loss, damage or delay was or was probably caused by or contributed to by the unseaworthiness etc. Therefore, claimant should prove the unseaworthiness etc. Please note that this burden of proof matters only if the carrier can successfully prove that the events or circumstances listed in article 17(3) caused or contributed to the loss, damage or delay. See, also (4).

<Basis of Liability>

7. *Is article 17(2) intended to mirror Article IV(2)(q) of the Hague-Visby Rules?*

Yes. Therefore the “(q) clause” is deleted from the list of exonerations in Article 17(3).

8. *The basis of the carrier’s liability under the Rotterdam Rules resembles that under the Hague-Visby Rules, but there seem to be some differences. The list of perils is more extensive than under Hague-Visby. The carrier can excuse itself if it is proven that the cause or one of the causes of the loss was not due to its fault. Do these elements imply that it is more difficult for shippers to make the carrier responsible?*

It is correct that there are some important differences between the Rotterdam Rules and the Hague-Visby Rules. However, the differences imply

that the Rotterdam Rules strengthen the carrier's liability.

The list of perils is *less* extensive under the Rotterdam Rules. The major differences with the list under the Hague and the Hague-Visby Rules are the following: Error in navigation and in management is no longer a valid defence under article 17(3). While the "fire defence" still exists, the carrier cannot rely on the defence if the person referred to in article 18 (any performing party, employees etc.) caused the fire. (article 17(4)(a)).

This is the same rule as in the Hamburg Rules rather than the Hague-Visby Rules.

On the other hand, the items added to the list such as (i), (n), or (o) are of a clarification nature and should not be regarded as a substantive expansion of the list.

If it can be proven that one of the causes of the loss was not due to its fault, the carrier is relieved of its liability *only for the part of the loss, damage or delay that is not attributable to the event or circumstances for which the carrier is liable* (article 17(6)).

9. *Why does the claimant bear the burden of proof of unseaworthiness, etc. under Rotterdam Rules?*

See, *Question 6(5)*.

10. *Is the list of perils in art 17 a step backwards from the Hamburg Rules?*

The Hamburg Rules repealed the list of exoneration and some delegations preferred that approach during the discussions in the UNCITRAL Working Group. However, most delegations did not think that significant differences existed in substance regarding whether to retain or to delete the list. If the listed events or circumstances caused or contributed to the loss, damage or delay, the court, even without the list, would usually infer that they are not attributable to the fault of the carrier. As well, the proof under article 17(3) does not offer absolute exoneration. The shipper still can hold the carrier responsible under article 17(4) and (5). While the retention of the list does not substantially change the substance, many delegations wished to preserve the existing case law that has developed under the Hague and Hague-Visby Rules.

11. *When there were concurring causes that contributed to the loss, damage or delay, should the carrier who wishes to be partly relieved of its liability prove the extent to which it is liable?*

As far as the carrier can prove that a part of the loss, damage or delay is not attributable to the events or circumstances for which it is liable, the court should relieve the carrier of that part of its liability. This is true, even if the exact extent of the loss, damage or delay that is not attributable to the events

or circumstances is not specified. Courts, which are accustomed to making these sorts of determinations, should exercise their discretion in this type of case, in an appropriate manner.

12. *Is liability for pure economic loss due to delay covered by the Rotterdam Rules?*

Yes, but it is subject to the special limitation applicable to economic loss, under article 60 (2.5 times of the freight payable on the goods delayed).

13. *Deck cargo*

(1) *What are “special risks involved” in deck carriage in article 25(2)?*

(2) *The carrier is required to state in the contract particulars that the goods may be carried on deck. Do particulars of deck carriage need to be stated in bold type on the face of the bill of lading, or would generic fine print on the reverse of the transport document be sufficient?*

(1) “Special risks” include, but are not limited to, such risks as wetting and washing overboard.

(2) The validity of the fine print on the reverse of the transport document is an issue left to the court. This is not a problem unique to this article.

<Limitation of liability>

14. *The carrier is entitled to limit its liability “for breaches of its obligations under this Convention” rather than the liability for loss of, damage to or delay in delivery of the goods. What is the intention of this wording, which seemingly expands the scope of claims subject to limitation?*

The wording “liability for loss of, damage to or delay in delivery of the goods” was thought inadequate for the purpose of article 59(1). The misdelivery of the goods is the typical case that the UNCITRAL Working Group had in mind during the deliberation of the Convention. Let us assume that the carrier delivers goods without observing the proper procedure provided under the Rotterdam Rules. The carrier would be liable to the person entitled to the delivery. In some jurisdictions, the court might find that this is one of the cases of “loss of goods” under article 17 because the goods were “lost” from the viewpoint of the person entitled to the delivery, even though they were, physically, not lost. However, in other jurisdictions, the court might see differently and conclude that this is not a case of “loss of the goods” and the liability is not based on article 17. In this case, it is not clear if limitation of liability applies, if article 59(1) provides that the limitation

applies to “liability for loss of, damage to or delay in delivery of the goods”. The current text, providing “liability for breaches of its obligations under this Convention”, clarifies that the limitation applies to the case of misdelivery.

15. *Is the limitation of liability more onerous to for the shippers under Rotterdam Rules? For instance, the shippers may forget to enumerate the number of packages in the container and thus be unable to claim under the per package limitation. Article 61 requires that the loss must result from a personal act or omission in order to result in the carrier’s loss of the benefit of liability limitation.*

No. The two elements referred to are not a novelty in the Rotterdam Rules at all.

The limit per package can only be invoked if the packages are enumerated in the transport document under article 4(5)(c) of the Hague-Visby Rules and article 6(2)(a) of the Hamburg Rules. Nothing is changed by the Rotterdam Rules. In any event, the declaration of the content of a container is always made, due to customs requirements, and it is hardly persuasive for a shipper to complain against this traditional rule by asserting that it could have enjoyed a better limitation amount if it had not forgotten to declare.

Only the personal behaviour of the carrier causes the loss of the right to limit under the Hague-Visby Rules, wherein reference is made to the act or omission of the carrier and reference to the carrier does not include the master or the carrier’s servants, as it appears clearly from article 4(2)(a). The same applies to the Hamburg Rules in article 8(1). The Rotterdam Rules simply explicitly codify the existing rule. Speaking more generally, the requirement of “personal” action of the person liable to break the limitation is a common feature of most maritime conventions today.

17. *Given the fact that the Rotterdam Rules have multimodal application, the Rules’ limitation amount fall to be compared with that of CMR or COTI-CMI. However, the weight limitation under the Rotterdam Rules is far lower than CMR or COTIF-CIM. How can this gap be justified?*

This comparison is inaccurate or even misleading. The limitation amount based on weight is 8.33 SDR per kilogram under CMR (Article 23(3)) and 17 SDR per kilogram under CIM-COTIF (Art. 40(2)). These amounts are certainly higher than the weight limitation under the Rotterdam Rules (3 SDR per kilogram). However, the Rotterdam Rules also adopt a separate limitation amount per package (875 SDRs). In practice, the limitation amount per package is often higher. Let us assume a package of a laptop computer, the gross weight of which is 1.0 kg. Under the CMR, the limitation would be 8.33

SDRs, while under the Rotterdam Rules it is 875 SDRs.

Because the calculation mechanism is totally different under maritime transport and land transport conventions, we cannot easily conclude that the limitation amount under CMR or COTIF-CIF is more advantageous than that of the Rotterdam Rules.

<*Time-bar etc.*>

18. *Are the notice periods of the loss of or damage to the goods and the two year period to bring a claim too short?*

The period of notice of loss under article 23 is extended to seven days as compared with the three day period under the Hague and the Hague Visby Rules. The period after which an action is time-barred under the Rotterdam Rules is twice as long as that under the Hague and the Hague-Visby Rules.

C. Shipper's Obligations and Liabilities

1. *Are the shipper's obligations more onerous than in previous conventions?*

The Rotterdam Rules includes more detailed provisions on the shipper's liability. However, the increased number of the provisions, in itself, does not imply more obligations or liabilities. First, it should be noted that the shipper has never been free from obligations and liabilities, even in such areas where previous conventions are silent. The shipper has been responsible under applicable national law. In addition, the contract of carriage has often imposed specific obligations on the shipper. Therefore, one should examine whether the shipper's obligations and liabilities under the Rotterdam Rules are expanded compared with those under applicable national law or under ordinary contractual terms. Although a comprehensive comparison is not possible, several basic elements are outlined here.

Save as mentioned in the next paragraph, the shipper's liability is fault-based under the Rotterdam Rules, as well as under the Hague, the Hague-Visby and the Hamburg Rules (Article IV (3) of the Hague and the Hague-Visby Rules and Article 12 of the Hamburg Rules). The carrier must prove the shipper's breach of obligation under the Rotterdam Rules in order to make the shipper liable. While the Rotterdam Rules explicitly provide for the specific obligations of the shipper, the effect would be subtle. Such a breach could cause the shipper's liability under applicable national law or under the contract of carriage in many cases. On the other hand, since the "breach of obligation" imposed under the provisions of Chapter 7 is the prerequisite of a

shipper's liability (article 30(1)), the explicit references to specific obligations may be understood as a safeguard for the shipper.

The shipper bears strict liabilities under the Rotterdam Rules in two situations: damage caused by dangerous goods and by inaccurate information provided by the shipper for the compilation of transport documents. These rules do not increase, at least substantially, the shipper's liability compared with previous conventions. Liability in respect of dangerous goods has already been strict under the Hamburg Rules and, in some jurisdictions, under the Hague and the Hague-Visby Rules. The shipper has been deemed to guarantee the accuracy of information that it provided to the carrier for the transport with regard to the goods under the Hague, the Hague-Visby and the Hamburg Rules.

Finally, it should be noted that parties cannot increase the shipper's obligations and liabilities through a contract (article 79(2)). The shipper is more protected in this respect than under previous conventions. The Rotterdam Rules also provide for certainty for the shipper in that they prohibit Contracting States from imposing more liability through their national legislation than the Rules impose.

Taking all of these elements into account, it is doubtful whether the shipper's obligations and liabilities are substantially increased under the Rotterdam Rules compared with existing conventions.

2. *Is it an imbalance that there is no limitation for shippers' liability to the carrier?*

Shippers are not currently entitled to a limitation on their liability under the Hague Rules, the Hague-Visby Rules or the Hamburg Rules. During the sessions of the UNCITRAL Working Group, the issue of the limitation of liability of the shipper was raised in connection with the suggested regulation of its liability for delay. The representatives who stressed shipper's interest were in fact concerned that such liability might be of an unpredictable level, for example, in the case of the sailing of the carrying ship being delayed for many days resulting in the shipper responsible for the delay being liable for the delay caused to every other shipper, and suggested that in respect of liability for delay, a limit would be appropriate. Efforts were made to identify an appropriate basis for such a limit, but they proved fruitless, and it was decided that shippers should not be liable for delay pursuant to the Convention. Such liability, therefore, is governed by the applicable law.

3. *The second sentence of Article 34 appears to relieve the shipper of liability for acts or omissions of the carrier or a performing party to which the shipper has entrusted the performance of its obligations. What is the meaning of article?*

It might be easier to understand the meaning if we restate the proposition from the reverse side: the carrier could not claim damages for its own acts or omissions, even if its activity had been performed following a request of the shipper. The former part of article 34 mirrors in respect of the shipper the provision of article 18 and the latter part of article 34 mirrors article 17(3)(h).

D. Transport Documents, Right of Control and Delivery of the Goods

- 1. With respect to Article 40(2), do you foresee that the transport document would contain a “standard form of disclaimer” that the carrier does not assume responsibility for accuracy of information furnished by the shipper?*

Because the Rotterdam Rules do not control the wording of qualifying clauses for contract particulars, the carrier might continue to use traditional standard forms of disclaimer such as “said to contain”, “contents unknown”, or “accuracy not guaranteed” etc. The Rotterdam Rules regulate that such disclaimers are valid only to the extent that article 40 allows. This unifies the diversity of law among jurisdictions regarding the effect of disclaimer, which is not completely regulated under the Hague and the Hague-Visby Rules.

- 2. Does article 47(2) allow the delivery of goods without surrender of the transport document?*

Yes, but only if that option is opted into by way of an *express* statement in the negotiable transport document or the negotiable electronic transport record that the goods may be delivered without their surrender.

E. Jurisdiction and Arbitration

- 1. Are Articles 66(a) and (b) an alternative with the choice to the plaintiff? In other words, can the plaintiff always insist on the provisions of Article 66(a)? What is the relationship between Article 66 and Article 67? Is Article 66(a) always paramount to the clauses in Article 67?*

As to the first two questions, the answer is in the affirmative. The language of article 66 clearly gives the choice to the plaintiff.

As to the third and fourth questions, Article 67 is clearly an exception to the general rule set out in article 66. As the general rule under the Rotterdam Rules, an exclusive choice of court agreement is not allowed, but if inserted in a volume contract, it is valid to the extent of the requirements under article 67.

2. *Is it possible that the exclusive jurisdiction clause in a volume contract binds the parties as well as the holder?*

Yes, but only if and to the extent that it meets the requirement under article 67 (especially article 67 (2)(c), that a non-party to the volume contract must be given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive).

3. (1) *Is it correct that by articles 74 and 78, the jurisdiction and arbitration clause terms apply only if the contracting State positively declares in accordance with Article 91 that they will be bound by them, otherwise, articles 68-73 and 75-77 would not apply?*

(2) *What would occur in the situation where State X did not specifically make a declaration to apply Chapter 14 of the Convention and State Y did? Assuming there was a shipment from State Y to State X and an action commenced in State Y. What would be the result, particularly if an anti-suit injunction was commenced in the State X?*

When a Contracting State does not make a declaration that it will be bound by the provisions in Chapter 14 and 15 the issue of jurisdiction is governed by its national law.

F. Volume Contracts and Freedom of Contract

1. *What are the safeguards for the shipper under article 80?*

Article 80 contains the following stringent mechanism for the protection of cargo interest from any potential abuse of freedom of contract, through the “volume contract” provisions.

Article 80(2) provides a series of conditions that must be met before the parties can derogate from the terms of the contract that are imposed by the Rotterdam Rules.

First, there should be a “prominent statement” regarding the fact that the contract contains the derogation (Article 80(2)(a)). A statement should be “prominent” rather than simply “expressed”. It should be written in such a form that attracts the reader’s attention, such as bold font or large capitalized letters.

Second, the volume contract should be either (i) individually negotiated or (ii) prominently specify which provisions of the contract contain the derogations (Article 80(2)(b)). Although subparagraph (b) allows for the possibility that the contract is not individually negotiated, subparagraph (d), which prohibits incorporation by reference or contracts of adhesion, would

make it very difficult for the parties to introduce derogations without individual negotiation.

Finally, the shipper should be given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with the Convention, without any derogation. The shipper always has an opportunity to enter into a contract with Convention terms at such a price as is published on the tariff.

Article 80(4) provides for “super-mandatory provisions”, which are core provisions of the Rotterdam Rules that cannot be derogated from even in volume contracts. These include obligations under Article 14 (a) and (b) (carrier’s duty to make and keep the ship seaworthy), Article 29 (shipper’s duty to provide information, instructions and documents), and Article 32 (shipper’s liability regarding dangerous goods) and liabilities arising from any breach of those provisions. It is also prohibited to exonerate or limit a carrier’s liability arising from its intentional or reckless act or omission that causes the loss of or damage to the goods or a delay in delivery.

Even when the terms of the volume contract validly derogate from the Convention, further conditions are required for the carrier to invoke it against any person other than the shipper. The conditions are that (i) the person receives information that prominently states that the volume contract derogates from this Convention and gives his/her express consent to be bound by such derogations and (ii) such consent is not solely set forth in a carrier’s public schedule of prices and services, transport documents or electronic transport records.

2. *What is the definition of “volume contract”? Would a certain number of containers be considered to be “a specified quantity of goods in a series of shipments”? What is the minimum range of shipments in a contractual time frame? Is the definition of “volume contract” too loose?*

Article 1(2) defines “volume contract” as “a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range”. Critics of the volume contract exception have argued that this definition is too loose. It is true that even a very small number of shipments, as they claim, can meet the definition.

The question is if there would have been a sensible way to limit the concept. It might be suggested to introduce a qualitative restriction, such as “significant number of shipments” but this would raise the question of what is significant. Is a quantitative restriction, such as “more than 100 shipments a year” or “more than 100,000 tons of cargo”, more sensible? In fact, there

Questions and answers on the Rotterdam Rules

was a proposal in 21st session of UNCITRAL Working Group along the lines of “the specified quantity of goods referred to should be 600,000 tons and the minimum series of shipments required should be 5”. (See, Report 21 of Working Group III (Transport Law) on the work of its twelfth session (Vienna, 6-17 October 2003), A/CN.9/544, para.251) This approach would cause another problem, although it is quite predictable. A specific figure would be too formalistic and a figure that makes sense in certain trade might not be sensible for other trades. Further, parties would not know with certainty until the specified number of shipments or volume was reached whether the earlier contracts qualified as volume contracts, creating uncertain commercial conditions.

After lengthy efforts, many delegations to the UNCITRAL Working Group reached the conclusion that there was no commercially reasonable way to limit the definition of volume contracts. Rather, they agreed that it would make more sense to enhance the protective requirements for any derogation in Article 80, so as to protect the parties from any abuse of the freedom of contract provisions, even in the case of small shipments.

G. Others

1. Is it true that the Rotterdam Rules do away with all of the existing case law and practice that has developed under the Hague, Hague-Visby and Hamburg Rules?

It is wrong to see that “the Rotterdam Rules do away with all of the existing case law and practice”. The situation is more delicate.

In some cases, the Rotterdam Rules intentionally changed the case law in certain jurisdictions. For instance, the purpose of article 24 is to change the case law regarding the consequence of unreasonable deviation in a certain jurisdiction, which was thought problematic.

At the same time, the Rotterdam Rules pay much attention to the preservation of valuable precedents. The list of exonerations under article 17(3) is a clear example. The wording is intentionally aligned with that of the Hague and the Hague-Visby Rules.

THE NEED FOR CHANGE AND THE PREPARATORY WORK OF THE CMI

STUART BEARE

The Rotterdam Rules were adopted by Resolution 122 of the 63rd session of the United Nations General Assembly on 11th December 2008 and were opened for signature in Rotterdam on 23rd September 2009. Twenty three states have so far signed the Convention.

The preamble to the Resolution recites concerns that the current legal regime governing the international carriage of goods by sea lacks uniformity and fails adequately to take into account modern transport practices, including containerisation, door-to-door transport contracts and the use of electronic transport documents. The Resolution thus identifies three areas where there have been major changes in the industry that necessitate changes to the carriage of goods by sea regime.

I am not going to say any more about the use of electronic transport documents; Justice Johanne Gauthier will speak on this topic in a moment. Nor am I going to say a lot about uniformity. Much has been written about the present disharmony and the problems are well known.¹

They have long been the concern of the CMI. The most recent work began in 1988 when a sub-committee was set up under the chairmanship of Professor Francesco Berlingieri and a study of the then current problems, albeit based on the Hague-Visby Rules, was a major topic at the CMI's conference in Paris in 1990. Five years later a new sub-committee was formed, commonly known as the "Uniformity Sub-Committee", also under Professor Berlingieri's chairmanship. Professor Berlingieri's 1999 report was the starting point for work on the obligations and liabilities of the carrier to be included in the Draft Instrument which the CMI was then preparing for the UNCITRAL secretariat. This Draft Instrument had its origins in the 29th session of the UNCITRAL Commission in 1996, when it considered a proposal to include in its work programme a revision of current practices and laws in the area of carriage of goods by sea with a view to achieving greater

¹ See, for example, Michael F Sturley, "The development of cargo liability regimes" in Hugo Tibergh (ed) *Cargo Liability in Future Maritime Carriage* (Hasselby 1997) 10 at pp 60-64.

uniformity of law. This proposal arose out of UNCITRAL's work on its Model Law on Electronic Commerce, which had exposed the fact that there were significant gaps regarding issues such as the functioning of bills of lading and sea waybills. The CMI took the lead in this project, which initially was primarily concerned with topics, such as electronic transport documents, that were not governed by existing conventions, but it became apparent that this work involved reviewing some provisions of the Hague-Visby and the Hamburg Rules, and this in turn led to a review of the obligations and liabilities of the carrier and the shipper, based initially on Professor Berlingieri's report.

The CMI delivered its Draft Instrument to the UNCITRAL secretariat in December 2001. This Preliminary Draft Instrument was the starting point for the subsequent inter-governmental negotiations in UNCITRAL Working Group III. During the six year period of these negotiations the Preliminary Draft Instrument was changed out of all recognition into the new Convention in terms of detailed drafting, but the basic structure of the Draft prepared by the CMI remains.

I shall now come back to modern transport practices. The Hague Rules were adopted in 1924 – almost ninety years ago. In 1924 the bulk of members of the United Kingdom P&I Club were operators of tramp steamers in the “6-10 Class”. That is they steamed at 6-10 knots on 6-10 tons of coal a day and had a deadweight capacity of 6-10,000 DWT.² Twenty years later saw the construction of over two thousand Liberty ships which had a maximum speed of 11.5 knots and a deadweight capacity of 10,685 DWT. Many of these ships were still in commercial service in the early 1960s when I began to practice. Cargo was often handled by ship's gear. Winches were prone to breakdowns, giving rise to disputes over laytime and demurrage. Tally clerks checked the cargo as it was slung over the rail, noting bags that were torn, slack or stained, and the bills of lading were claused according to their receipts under article III rule 3 of the Hague Rules.

Fifty years later the *Emma Maersk* was launched. She has a speed in excess of 25.5 knots, a capacity of 157,000 DWT and she can carry 11,000 20ft containers.³ Container transport was not dreamt of in 1924 and international container transport only began in the late 1960s⁴. New deep water ports were then needed to accommodate the new container ships and

² See Peter Young *Mutuality The Story of the UK P&I Club* (Granta Editions, 1995) 31.

³ www.emma-maersk.com.

⁴ The *Ideal-X* made the first containership voyage in April 1956 from Newark, New Jersey, to Houston, Texas. The first transatlantic container service was opened by Moore-McCormack Lines in March 1966. For an account of the “container revolution” see Marc Levinson *The Box How the Shipping Container made the World Smaller and the World Economy Bigger* (Princeton, 2006).

terminal operators needed to invest in new shore facilities. When the *Emma Maersk* called at Felixstowe on her maiden voyage to Europe in November 2006, 300 dock workers unloaded 3,000 containers in 24 hours using six shore cranes.⁵ The whole loading, unloading and stowage operation has been computerised and tally clerks have disappeared. These changes in ship construction and operation demand changes to the carriage of goods regime. Article 25 of the Rotterdam Rules brings the legal regime for deck cargo up to date to take account of cellular container ships, which are not built with the conventional decks of a Liberty ship. Article 40 re-writes article III rule 3 of the Hague Rules and specifically introduces the concept of closed containers.

These technical changes have led to commercial change. Many of the containers discharged from the *Emma Maersk* in November 2006 would have been loaded onto trucks and taken direct to wholesalers' or major retailers' inland distribution depots pursuant to door-to-door transport contracts. Door-to-door transport inevitably followed the container revolution. The CMI led the way in formulating a legal framework with the "Tokyo Rules", which were adopted in 1969. These Rules formed the basis on which the container shipping industry developed its contracts for combined, or multimodal, transport on a network basis which took account of the liability provisions in unimodal regimes for other modes of transport, in particular road and rail.⁶ These concepts have been incorporated into the Rotterdam Rules in article 26, which provides for a limited network regime when loss or damage to the goods occurs during the carrier's period of responsibility, but before their loading onto the ship or after their discharge from the ship.

The carriage of goods by sea no longer simply involves the carrier and the shipper. The concept of the "actual carrier", as opposed to the contracting carrier, was introduced by the Hamburg Rules, but only in the context of port-to-port transport. It was necessary to expand the concept in the Rotterdam Rules to take account of door-to-door transport contracts and the many parties involved in modern transport logistics. Hence the Rotterdam Rules refer to "performing parties", but the Rules draw a clear bright line in respect of liability between "maritime performing parties", who perform the carrier's obligations between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship, and are covered by the Rules, and other, non-maritime, performing parties, such as inland truckers, that are not. The Rules thus extend the Himalaya protection beyond article IV bis of the Hague-Visby Rules, as carriers currently seek to do by contract.⁷ Professor Fujita will develop this topic in more detail later.

⁵ *Times* 6 November 2006.

⁶ See, for example, the form of bill of lading code named "Combiconbill" issued by The Baltic International Maritime Council (BIMCO) clause 11.

⁷ See, for example, the "Combiconbill" clause 14.

The goods discharged from the *Emma Maersk* in November 2006 were mainly consumer goods which would not have been traded during the transit from China. Their carriage did not therefore need to be covered by negotiable transport documents. This development was noted in the Explanatory Note to the Hamburg Rules prepared by the UNCITRAL secretariat and the Hamburg Rules, in the context of port-to-port carriage, apply to all contracts of carriage by sea, as defined by article 1.6. At the 1990 Paris Conference the CMI adopted its “CMI Uniform Rules for Sea Waybills” for voluntary incorporation into contracts of carriage not covered by a bill of lading or other similar document of title. These Rules apply to the contract of carriage any international convention, or national law, that would have been compulsorily applicable if a bill of lading or similar document of title had been issued. The Rules have been widely adopted by the industry⁸ and, by applying the Hague, Hague-Visby or Hamburg Rules to such contracts, they have led to a degree of harmonisation between negotiable and non-negotiable documents. It was a natural development to extend the scope of application of the Rotterdam Rules to govern both negotiable and non-negotiable transport documents that evidence or contain a contract of carriage falling within the requirements of article 5. Again Professor Fujita will say more about this later.

In this short presentation I have outlined the most important changes that have taken place since 1924, mostly in the last 50 years, in ship construction and operation. These changes have driven commercial changes, but the solutions developed by the industry have evolved piecemeal. In my submission the need for change in the international regime is unquestionable. The Rotterdam Rules attempt to bring the industry responses together into a single up-to-date and comprehensive code.

One final point. The changes that I have described have taken place worldwide. Due in large part to containerisation, the shipping industry is now truly global; much more so than in 1924. Regional attempts at solutions are not enough. I believe that only an international convention will provide a sound legal framework for the international carriage of goods by sea and meet the requirements of a fully globalized industry.

⁸ See the “Genwaybill” issued by BIMCO.

THE COVERAGE OF THE ROTTERDAM RULES

TOMOTAKA FUJITA

I. Introduction

I am very much honored to have an opportunity to make this presentation to the CMI Colloquium in Buenos Aires. My short speech today is entitled “The Coverage of the Rotterdam Rules.” I will be addressing three questions: (1) *Which contracts are covered by the Rotterdam Rules (“scope of application”)*, (2) *Which period is covered by the Rotterdam Rules with respect to a carrier’s obligations and liabilities (“period of responsibility”)*, and (3) *Who is covered by the Rotterdam Rules (“performing party”)*. These are more technical aspects than those that the previous speakers have covered, but they are, still, the very basic features of this Convention.

II. Which Contracts are Covered by the Rotterdam Rules (“Scope of Application”)

Let us begin with the first topic: *Which contracts are covered by the Rotterdam Rules?* In a sense, this is one of the least innovative aspects of the Rotterdam Rules.

A. “Contract of Carriage”

Rotterdam Rules apply to a contract of carriage, which is defined as follows: “A contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage” (Art.1(1)).

You will immediately notice two important aspects of this definition. First, the Rotterdam Rules apply to a contract. The issuance of a certain kind of document is irrelevant. Second, the Rotterdam Rules apply to a contract for multimodal transport as a whole; provided it contains an international sea-leg (see Article 5(1)). Of course, they do not force the parties to enter into a multimodal contract. However, once they agree to enter into a multimodal contract, the Rules apply to the whole transport.

B. Exclusions and Inclusions

The Hague-Visby Rules and the Hamburg Rules excluded “charterparties” from their scopes of application (Hague-Visby Rules Article I(b) and Hamburg Rules Article 2(3)). The Rotterdam Rules adopt a more detailed approach. However, please note that although the formulation looks different, the scope of exclusion is, in practical terms, almost identical. Article 6 excludes contracts of carriage that were excluded and includes contracts of carriage that were included under the existing conventions.

Article 6(2) excludes a contract of carriage in non-liner transport. In addition, an arrangement for the use of space on a ship in liner-service (such as “space charter”) is excluded in Article 6(1). These provisions exclude all contracts that would fall under the “charterparty exclusion” in traditional maritime transport conventions. The exclusion of non-liner transport needs a fine-tuning to maintain the traditional scope of exclusion. Let us suppose that shippers bring goods for carriage to the port of loading. When the volume of the goods reaches a certain level, the ship departs for its destination. The route is usually fixed, but the schedule is not. Bills of lading are issued for this carriage. This is a type of carriage sometimes called “on-demand carriage” and often used for the shipment of used cars in Japan. Please note that this contract was regulated under the Hague or the Hague-Visby Rules because bills of lading are issued and because the contract does not constitute a charterparty. The proviso of Article 6(2) simply intends to reintroduce “on-demand carriage” into the scope of application of the Rotterdam Rules.

I have sometimes heard a complaint that the provisions on the exclusions under the Rotterdam Rules are too complex. Article 6 is certainly more “detailed” compared to the previous conventions, but please ask yourself whether the situation is improved if the article simply states, like previous conventions, that “this Convention does not apply to charterparties or similar contracts.” Given the increasing diversification of the contract of carriage in practice, such a text would leave a much more difficult task for national courts to decide whether to apply the Rotterdam Rules. One should remember that the text of the Rotterdam Rules is not complex for complexity sake. The complexity is necessary to achieve uniformity and predictability.

C. Application vis-à-vis Third Parties

Even when a contract for carriage falls under the exclusion in Article 6, the Rotterdam Rules apply to the relationship with third parties, such as the consignee, controlling party, or holder (Article 7). Please note that the Rotterdam Rules no longer require the issuance of a transport document or an electronic transport record, whereas bills of lading are necessary under the Hague, the Hague-Visby, and the Hamburg Rules. The Rotterdam Rules

simply aim to protect any party that is not involved in the negotiation of an excluded contract.

D. Geographic Scope of Application

The geographic scope of application is provided in Article 5. Although there are some differences with existing conventions, I shall skip the details since they are not essential.

III. Which Period is Covered by the Rotterdam Rules with Respect to a Carrier's Obligation and Liabilities ("Period of Responsibility")

Let us move on to the next topic: the carrier's period of responsibility.

A. Carrier's "Door-to-Door" Period of Responsibility

One of the most important features of the Rotterdam Rules is the expansion of a carrier's period of responsibility. The Hague Rules and the Hague-Visby Rules adopt a "tackle-to-tackle" principle. The Hamburg Rules have expanded their scope a little, but they still restrict coverage from "one port to another port." In contrast, Article 12(1) of Rotterdam Rules provides that "the period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered." Therefore, the period of responsibility could begin and end outside of the port area. With the development of containerized transportation, a single coherent liability regime that covers the whole period of transit was highly desired.

Please note that the Rotterdam Rules do not prohibit the parties from entering into a traditional tackle-to-tackle or port-to-port contract of carriage. Article 12(3) provides that the parties are to agree on the time and location of the receipt and delivery of the goods. At the same time, Article 12(3) prohibits the parties from making the carrier's period of responsibility shorter than "tackle to tackle."

B. Treatment of "FIO"

In practice, the carrier and shipper sometimes agree that the shipper will load and unload the goods onto or from the vessel. Such an arrangement is called "free in/free out" (FIO). The validity of a FIO clause has been discussed under both the Hague Rules and the Hague-Visby Rules. In some jurisdictions, such as the U.K., the courts understand a FIO clause as determining the scope of the contract of carriage and that the mandatory regulation to the carriage of goods by sea does not apply to activities under FIO clauses because they are outside the scope of the contract of carriage (see *Pyrene v Scindia Navigation* [1954] 2 QB 402, *Jindal Iron and Steel Co Ltd*

and Others v Islamic Solidarity Shipping Company (The “JORDAN II”), [2005] 1 Lloyd’s Rep 57). Under the Rotterdam Rules, however, this justification is no longer valid. Article 12(3) clearly states that the parties cannot agree on a time and location of the receipt of the goods beginning after the commencement of the initial loading or ending before the completion of the final unloading. This is why Article 13(2) specifically provides that the carrier and the shipper may agree that the loading, handling, stowing, or unloading of the goods may be performed by the shipper, the documentary shipper, or the consignee. Article 13(2) explicitly authorizes the validity of FIO clauses and Article 17 provides an explicit exoneration for the carrier from liability as a result of such activities.

C. Multimodal Aspect of the Rotterdam Rules

The expansion of the carrier’s period of responsibility inevitably introduced legal issues related to multimodal transport. Due to the limited time, I simply refer to two provisions that address the issue. Article 26 introduced the network principle in as limited a way as possible. Only to the extent that there is an international instrument that covers the carrier’s liability issue, its provisions would prevail over the regulations under the Rotterdam Rules. Article 82 provides a further safeguard for the Contracting States to avoid any possible conflicting obligation to apply the provisions of other transport conventions that are inconsistent with the Rotterdam Rules.

IV. Who is Covered by the Rotterdam Rules (“Performing Party”)

Although the Rotterdam Rules regulate the contract of carriage, they also pay attention to people other than the contracting parties. We should consider three different questions with respect to those persons: (1) *Who, other than the carrier, is liable under the Rotterdam Rules?*; (2) *Whose acts or omissions are attributable to the carrier?*; and (3) *Who is entitled to a defense and limitation of liability under the Rotterdam Rules?*

A. Who is Liable under the Rotterdam Rules?

First, who is liable under the Rotterdam Rules? The Hague Rules and the Hague-Visby Rules regulate only the liability of the carrier. The Hamburg Rules impose liability on the “actual carrier” on the same basis as the contracting carrier. The Rotterdam Rules, consistent with these trend, moved even further.

Article 1(6) defines the term “performing party” as a person who performs or undertakes to perform any of the carrier’s responsibilities under a contract of carriage and who acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control. This notion is broader than “performing carrier” or “actual carrier” used in previous international

conventions in the sense that it includes not only the sub-carrier who performs the actual carriage, but also other persons involved in the performance of the carriage, such as stevedores or terminal operators.

The Rotterdam Rules, however, do not impose liability on all performing parties. Rather, they provide for liability only for those called a “maritime performing party.” The definition of a “maritime performing party” is found in Article 1(7). Roughly speaking, a “maritime performing party” is a performing party who offers services related to sea carriage.

Why should the Rotterdam Rules restrict their liability regime to the “maritime performing party”? The reason is that the UNCITRAL Working Group thought it was too far-reaching if the Rotterdam Rules covered purely domestic land transportation. If the Rotterdam Rules covered the liability of all performing parties, they could apply to a truck driver who carries the goods to a neighboring town. Such a result is beyond the ordinary expectations of a small carrier who engages exclusively in domestic land transport. Moreover, each state has its own domestic policy for regulating such a transport, and it was thought wise for the Rotterdam Rules not to intervene.

B. Whose Acts or Omissions are Attributable to the Carrier?

The Rotterdam Rules refer to broader class of persons with regard to the second question: *Whose acts or omissions are attributable to the carrier?* Article 18 provides that a carrier is liable for the breach of its obligation under the Convention caused by the acts or omissions of not only any performing party, but also other persons that perform or undertake to perform any of the carrier’s obligations under the contract of carriage. If the concept of “performing party” alone can completely define the scope of the persons whose acts or omissions are attributable the carrier, it would be most elegant. Unfortunately, there are “residual” people whom the term “performing party” cannot cover, so a fine-tuning was thought to be necessary to make sure no one is missing from the list.

C. Who is Entitled to a Defense and Limitation? (“Himalaya Protection”)

Finally, who, other than the carrier, is entitled to the defense or limitation of liability that the carrier enjoys? Such protections for a person other than the carrier are known as “Himalaya protection.” Article 4 provides a list of persons who are entitled to a defense and limitation of liability under the Rotterdam Rules whether the action is founded in contract, tort, or otherwise.

When you look at the persons other than the carrier referenced in article 4, they are divided into two categories. First, the maritime performing party is entitled to a defense and limit of liability under the Convention. This is because maritime performing parties are liable under the Rotterdam Rules,

and it is simply logical that they also enjoy the benefits under the Rules. The second category is employees of the carrier or maritime performing party (article 4(1)(c)), as well as masters, crew, or other persons offering services on board the ship (article 4(1)(b)). They need a different justification for protection because the Rotterdam Rules do not impose any liability on them. The reason they receive this protection is that the employees are economically dependent on their employers. Their disadvantages are ultimately borne by the employer, the carrier or maritime performing parties in this context. Due to their economic dependency, if we denied the defense and limit of liability for the employees, it would result, in fact, in depriving the carrier or maritime performing party itself of the defense and limit of liability.

If economic dependency is the reason, we cannot automatically extend Himalaya protection to all performing parties. An inland carrier, such as a railroad or road carrier, is not dependent on the carrier, at least not to the same degree. This is why the list in Article 4 does not refer to “performing parties,” only to a part of them. Please note that this does not mean that the Rotterdam Rules prohibit the parties from agreeing on a “Himalaya clause” in the contract, giving the persons who are not covered by Article 4 the same defense and limitation of liability as the carrier. However, save for specific contract provisions, these persons not listed in Article 4 cannot enjoy the benefit of a defense and limitation of liability.

V. Conclusions

In this short speech, I have talked about three aspects with respect to the coverage of the Rotterdam Rules. The Rotterdam Rules are least innovative with the first aspect, “scope of application.” With respect to the second aspect, “carrier’s period of responsibility,” the Rules have expanded the coverage to “door-to-door transport” in response to modern containerized transportation. Finally, the Rotterdam Rules include a more comprehensive reference to the persons involved in the performance of a contract of carriage, achieving more uniformity in a liability regime for carriage of goods by sea.

In closing this speech, I have to confess there is another aspect of the “coverage” which I did not touch on: *the comprehensive coverage of legal issues under the Rotterdam Rules*. This is, in my opinion, the most important aspect of the Rotterdam Rules and will be covered by the speakers in the Session after the break.

THE ROTTERDAM RULES SHIPPER'S OBLIGATIONS AND LIABILITY

JOSÉ VICENTE GUZMÁN

Introduction

1. In general terms, the Rotterdam Rules (RR) do not make substantial changes about the existing law regarding shipper's obligations and liability. Most of the features in the subject have been kept nearly the same as they were treated in the Hague Rules (HR), the Hague – Visby Rules (HVR) and the Hamburg Rules (HbR).

2. The Hague and Hague-Visby Rules do not have a special chapter regulating the shipper's obligations and liabilities. However, several of their provisions partially deal with the subject, without any particular order or method to facilitate their application. As to the liability of the shipper, the HVR start from a general provision of responsibility set out in article 4.3, based on the act, fault or neglect of the shipper, his agents or representatives, which has been considered as a fault based liability regime, placing on the carrier the burden of proving the shipper's fault. Subsequently, section 4.6 establishes a strict liability regime of the shipper for damage to the carrier arising out of the shipment of dangerous goods without consent.

3. Even though Part III of the HbR is dedicated to the shipper's liability (Articles 12 and 13), they do not represent a significant advance on what had already been established in the HVR. They also provide for a general principle of fault based liability of the shipper (art. 12), but without clarifying whether the shipper's fault is presumed, as provided for in the same convention for the carrier's liability. And then, article 13, sets forth a strict liability regime for the shipment of dangerous goods, similar to the system of HVR.

4. The new convention regulates in its entirety the shipper's obligations and liability in Chapter VII (Articles 27 - 34), with detailed provisions, which gives more certainty to the regulation, for the benefit of the market and the parties involved.

5. Shipper's obligations can be divided into the following:
 - a. To deliver the goods ready for carriage
 - b. To provide information, instructions and documents
 - c. To provide information for the compilation of contract particulars
 - d. To inform of the dangerous nature or character of the goods

6. Shipper's liabilities can be classified as follows:
 - a. General shipper's liability rule
 - b. Special liability regime regarding the information for the compilation of contract particulars
 - c. Special liability regime for dangerous goods

Shipper's Obligations

First Obligation - To deliver the goods ready for carriage

7. According to article 27.1, the shipper is obliged to deliver the goods to the carrier in a "ready for carriage" condition, which implies to deliver the goods in such a condition that:

- a. They will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, as well as unloading; and
- b. They will not cause harm to persons or property.

8. Article 27.3 of the RR extends this obligation of the shipper, when the goods are loaded onto a container or a vehicle, so that the shipper is then obliged to carefully stow, lash and secure the goods in or on to the container or vehicle, in such a way that they will no cause harm to persons or property.

9. This obligation of the shipper is typical in any contract of carriage of goods, and it was implicit in the HVR, as they contemplate an exemption of the carrier's liability due to bad packaging (art. 4.2.n HVR). The HbR, instead, do not have any specific obligation of the shipper to properly pack the goods to be carried; however, my view is that this is a primary obligation of every shipper in any contract of carriage, as it is provided for in some national regulations, so I think the situation is not altered by the fact that the HbR do not expressly contemplate it. Thus, in this point I do not see that the RR worsens the position of the cargo interests in comparison with the existing regimes; on the contrary, I think that article 27 clarifies the contractual relationship of carriage by adding specific regulations in cases where the goods are carried in a container or vehicle, which is very common in the current sea trade.

10. Additionally, article 27.2 of the RR, establishes that the shipper shall properly and carefully comply with any of the obligations related to loading, handling, stowing or unloading of the goods, in case he has agreed, according to article 13.2, to perform any of these activities, in which is known as the legitimation of the FIOST agreements, very common in certain trades.

Second Obligation - To provide information, instructions and documents

11. The RR then refers to the shipper's obligation to provide the carrier with information, instructions and documents relating to the goods, which are reasonably necessary:

- a. For the proper handling and carriage of the goods, including the precautions to be taken by the carrier and a performing party; and
- b. For the carrier to comply with the law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

12. However, under article 29.2 of the RR, even if the carrier does not notify the shipper about the information, instructions or documents required for the carriage, the shipper is still obliged to comply with any law requiring to provide such information, instructions or documents. Therefore, this specific obligation of the shipper does not depend, according to the RR, on any particular requirement from the carrier.

13. The new provisions of the RR do not, in fact, modify the existing law as stated in the international conventions in force, since the HR and HVR by virtue of the “act or omission of the shipper or owner of the goods” exception (art. 4.2.i) render the carrier not liable for the loss or damage to the goods caused by any breach of the shipper of his duty to provide the carrier with the information, instructions and documents necessary for the carriage, according to the applicable law. The same rule is derived from article 12 of the HbR. In this case, the burden of proving the act or omission of the shipper remains on the carrier, as it is now specifically set forth in article 30.1 of the RR.

Third Obligation - To provide information for the compilation of contract particulars

14. The shipper is obliged to provide to the carrier with the information needed to compile the contract particulars, as stated in article 31, which read together with article 36.1, includes:

- a. A description of the goods as appropriate for the transport.
- b. The leading marks necessary for identification of the goods.
- c. The number of packages or pieces, or the quantity of goods.
- d. The weight of the goods, if furnished by the shipper.
- e. The name of the shipper.
- f. The name of the consignee, if any.
- g. The name of the person to whom the document of transport is going to be issued, if any.

15. The standard and nature of this obligation of the shipper is that of a guarantee, as it was provided for in the preceding conventions.

16. Indeed, the same obligation exists in article 3.5 of the HVR and in article 17.1 of the HbR. Therefore, the RR make no significant changes to the existing law and do not increase the shipper’s obligations in this regard.

Fourth Obligation - To inform of the dangerous nature or character of the goods

17. Special provision is made by article 32 about the shipper's obligation to inform the carrier about the dangerous nature or character of the goods to be carried, before they are delivered to the carrier or to any performing party. Although the obligation remains, in essence, the same, as compared with the preceding conventions, there are some novelties, which are worth mentioning.

18. First, the dangerous nature or character of the goods is defined by reference to a potential danger to persons, property or the environment, which in my view makes it easier to determine the cases where certain goods shall be considered as dangerous for the purpose of the contract of carriage. The HVR only referred to the "inflammable, explosive or dangerous nature" of the goods (art. 4.6), while the HbR just mentioned the "dangerous goods" without any additional precision (art. 13). Therefore, it is submitted that the new reference to the potential damage to persons, property or the environment, as a parameter to identify a cargo as dangerous, is more precise.

19. Second, this duty of information of the shipper not only arises where the goods are actually of a dangerous nature or character, but also when they reasonably appear likely to become such a danger, which imposes on the shipper a more stringent obligation.

20. And thirdly, the RR imposes a new obligation to the shipper consisting of marking and labelling the dangerous goods in accordance to any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. This obligation, which already existed by the application of such applicable laws and regulations, would normally, under the existing conventions, render the goods "legally dangerous" as opposed to "physically dangerous". However, this obligation is now emphasized as a contractual obligation of the shipper under the RR.

21. Article 15 of the Rotterdam Rules regulates the right of the shipper to take measures when dangerous goods have been loaded onto the ship, with the same principle applicable in the light of previous conventions (Article IV.6 of the Hague Rules and article 13.2.b of the Hamburg Rules). Indeed, the carrier, in case of shipment of dangerous goods may well refuse to receive them (as it could do under the previous regimes), or having received them, to take measures if they become dangerous or "reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment" (same as in the previous regimes). It is important to emphasize that now, under the new Convention the carrier may also adopt the same measures if the goods are dangerous or could reasonably be expected to become dangerous to the environment. Article 15 is expressly subject to carrier's compliance with the obligations set forth in article 13, which implies that if the carrier knew the potentially dangerous nature of the

goods he may only be exempted from liability for their destruction or unloading, if he proves compliance with these obligations.

Shipper's Liability

General shipper's liability rule

22. There is a general fault based liability rule for the shipper, for any breach of his obligations (i) to deliver the goods ready for carriage and (ii) to provide information, instructions and documents relating to the cargo. According to this, the shipper will indemnify the carrier for any loss or damage caused by the shipper's breach of any of these obligations.

23. In order to establish this liability, the burden of proof is on the carrier to demonstrate that there was a breach of these obligations on the part of the shipper and that such a breach effectively caused the loss or damage he is claiming for. It is noticeable that for compromising the shipper's liability it is necessary to establish a breach of his obligations first, which means a difference as compared with the general formula of the HVR where the act, fault or neglect of the shipper entailed his liability, with – it is submitted – the possibility that an “act of the shipper”, without the existence of any actual fault on his part, could make him liable.

24. The shipper will then be relieved from liability if he can prove that the cause or one of the causes of the loss or damage is not attributable to his fault or to the fault of any person to whom he entrusted the performance of any of his obligations, including his employees, agents and subcontractors, for whom he is vicariously liable, according to article 34 of the convention.

25. As to the breach of the obligation to provide information, instructions and documents relating to the cargo, the shipper can also escape liability by proving that such information, instructions and/or documents were reasonably available to the carrier (art. 29.1).

26. According to article 30.3 there is an apportionment of liability of the shipper when he can prove that there was another cause contributing to the loss or damage, which is not attributable to him or to the persons for whose he is vicariously liable. In that case, the shipper will only be liable for that part of the loss or damage that is attributable to its fault or to the fault of such persons, being the burden of proving this apportionment on the shipper. This apportionment mechanism is not applicable to the other liabilities of the shipper that will be dealt with later.

27. The convention does not specifically contemplate any shipper's liability for delay in the delivery of the cargo or the information, instructions and documents, so it is submitted that this might be subject to the application of national law. However, it is necessary to bear in mind that any clause of the contract of carriage aimed at imposing liability of the shipper for delay would be considered void under article 79.2 (b) of the RR, which prohibits any

clause increasing the liability of the shipper as provided for in the convention.

Special liability regime for the breach of the obligation to provide information for the compilation of the contract particulars

28. Since this obligation takes the form of a guarantee from the shipper to the carrier about the accuracy of such information, the liability system for its breach is strict, because article 31.2 states that “the shipper shall indemnify the carrier” against loss or damage resulting from the inaccuracy of such information, and this breach is expressly excluded from the general fault based liability system set forth in article 30.

29. This strict liability regime for the carrier is not entirely new, since the same standard of shipper's liability might be implied - as it has been in some jurisdictions - by the fact that under article 3.5 of the HVR and under article 17 of the HbR, this obligation was also treated as a guarantee.

Special liability regime for dangerous goods

30. Shipper's liability in case of breach of his obligations in relation with dangerous goods is also strict (art. 32), following the same trend in the existing conventions. Therefore, if the carrier proves that there was a breach of shipper's obligations to inform the dangerous nature of character of the goods, or to mark and/or label them properly in accordance with the applicable laws or regulations, and that this caused a loss or damage to him, then the shipper will have to compensate such loss or damage.

31. However, the shipper can be exonerated from this liability if he is able to prove that the carrier (or a performing party) was aware of the dangerous nature of the goods, as it had already been considered as good law under the HVR.

Other provisions

32. Article 28 imposes to both carrier and shipper a mutual obligation to provide each other with information and instructions that are required for the proper handling and carriage of the goods, at the request of any of them, and provided that the requested party is in possession of this information and the same is not reasonably available to the requesting party.

33. The two years time bar set forth in article 62 of the RR is also applicable for any action that can be brought against the shipper, which marks a distinction as compared with the HVR, which only provide for time bars benefiting the carrier.

34. It is true that the Rotterdam Rules do not establish a limitation of liability for the shipper, as it does for the carrier's responsibility. This is a feature that has raised very much criticism to the new convention. However, it is not possible to say that this is a disadvantage of the Rotterdam Rules as

compared with the Hague Rules, the Hague - Visby Rules or the Hamburg Rules, because none of these conventions provide for any limitation of liability of the shipper. In fact, there is no international convention regulating the contract of carriage by any mode of transport, which contemplates limitations of liability for the shipper. So in this particular issue the Rotterdam Rules can not be accused of being in detriment of the legal position of the cargo interests, because they simply maintain the same line of the preceding conventions.

Conclusion

35. As it was already said, the Rotterdam Rules (RR) do not make substantial changes about the existing law regarding shipper's obligations and liability. Instead, they contain a more complete and detailed set of provisions on shipper's obligations and liability, which do not worsens the shipper's contractual position under the existing regimes, but gives more certainty to the regulation, for the benefit of the market and the parties involved.

LIMITATION OF LIABILITY IN THE ROTTERDAM RULES - A LATIN AMERICAN PERSPECTIVE

ALBERTO C. CAPPAGLI*

I. Introduction

1. *Limitation of Liability in Maritime Law*

Limitation of liability is considered a traditional rule and a principle of the maritime law.

In France, Book II, Title VII, article II of the *Ordonnance de la Marine* of 1681, established the limitation of liability of the shipowners. This provision has been followed by the French Commercial Code, the codes of Spain, Greece, The Netherlands, Portugal and Italy, among others, and by several Latin American codes (such as those of Argentina, Brazil, México, Peru and Uruguay).

Patrick Griggs explains that in the United Kingdom, shipowners' limitation of liability has been introduced in 1733 by the Responsibility of Shipowners Act, pursuant to which shipowners were allowed to limit their liability for cases of theft by the master or crew. In 1786 the limitation was extended to include any act of the master or crew occurred without shipowners' privity or knowledge¹.

Nowadays, there are two different limitations of liability in maritime law: (a) the general limitation for most maritime credits, and (b) the carriers' limitation.

Regarding general limitation, there are basically three systems: (a) the limitation based on the value of the ship at the end of her voyage, (b) the limitation based on the tonnage of the ship, and (c) a mix of both these systems.

In Latin America the value of the ship at the end of her voyage was adopted by Uruguay, the tonnage of the ship was adopted by Venezuela in

* acc@marval.com.ar

¹ Patrick GRIGGS, Richard WILLIAMS and Jeremy FARR, *Limitation of liability for maritime claims*, fourth edition, LLP, London, Singapore, 2005, p. 5.

2001, following the Limitation Convention of London of 1976, and a mix of both systems was adopted by Argentina in the Navigation Act of 1973, following the model of the United States of America.

After this brief introduction I will now focus my presentation on the carriers' limitation of liability.

As it has been well noted, the Rotterdam Rules do not mean a "revolution", but rather an evolution.² It is therefore my intention to shortly describe the evolution of the limitation of carriers' liability in the previous conventions.

II. Carrier's limitation of liability

2. *The Clauses of the Bills of Lading Limiting Carriers' Liability and the States Reaction*

Till the beginning of the last century, bills of lading included clauses of limitation of liability which were admitted by the courts of a number of countries. As a reaction against such clauses, however, some States enacted legislation restricting carriers' right to limit their liability.

In this line was the Harter Act of the United States (1899), which inspired similar legislation in Australia (1904), Canada (1910) and New Zealand (1908), and the Hague Rules of 1921 adopted by the International Law Association (ILA). The ILA rules are the immediate precedent of the Brussels Convention of 1924 on Bills of Lading, that was drafted and sponsored by the CMI. In view of its origin, this convention is known as *The Hague Rules*.

3. *The Hague Rules*

The Hague Rules have been approved or enacted by eight Latin American countries: Argentina, Bolivia, Cuba, the Dominican Republic, Ecuador, Mexico, Paraguay and Peru.

In case of "*loss or damages to or in connection with goods*", article 4.5 of the Hague Rules establish a limit of "*100 pounds sterling per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper and inserted in the bill of lading*", and article 9 provides that "*the monetary unit mentioned in this Convention are to be taken to be gold value*".

² "The new convention is deliberately evolutionary, not revolutionary" (Michael STURLEY, *The UNCITRAL Carriage of Goods Convention: Changes to existing law*, in CMI Yearbook 2007-2008, Athens I, Documents for the Conference, p. 255).

4. *Some Interpretation Issues Arising From the Hague Rules*

Articles 4.5 and 9 of the Hague Rules posed, mainly, two sets of construction problems.

First, some general problems regarding basic criteria, that have not been considered in the original version of the Hague Rules but have been solved by further Protocols, Rules or Conventions:

- Is a container a *package*? Is a huge and unpackaged machine a *unit*? Which is the unit in case of bulk cargoes?
- What packages or units should be considered in order to establish the limit? The packages or units mentioned in the bill of lading or the packages or units lost or damaged?
- Can the carrier lose the right of limitation?
- Are damages for delay subject to limitation?

The second construction problem is referred to the monetary unit:

- What is the *gold value* to be considered in order to convert the 100 pounds sterling into currency?

III. Basic criteria on limitation of liability of carrier of goods

5. *The Hague-Visby Rules*

The first set of questions in respect of the Hague Rules has been partially answered by the Brussels Protocol of 1968, known as the *Visby Rules*.

The Hague Rules, as amended by the Visby Rules, are known as the *Hague-Visby Rules* and have been adopted in Latin America by Ecuador and México.

5.1. *Package or Unit: Containers and Other Articles Used to Consolidate Goods*

The Visby Rules gave a new wording to article 4.5 of the Hague Rules. Pursuant to the new wording “*where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.*”

Although Argentina is not a party to the Visby Rules, some of their provisions have inspired the Navigation Act of 1973. The new wording of article 4.5 is one of such provision. As a consequence of the adoption of this specific provision of the Visby Rules in Argentine internal law, courts have extended this solution to cases governed by the Hague Rules³.

³ Supreme Court, in re m.v. “*Río Marapa*”, 1989, Fallos: 312:152.

5.2. Unpackaged Goods

If unpacked goods were not considered a package or unit, carriers would not be entitled to limitation of liability in their respect. The Visby Rules solved this problem by adopting the weight of the affected cargo as an additional criterion in order to establish the limit of liability.

The Argentine Republic, which is not a party to the Hague-Visby Rules, solved this problem differently. Article 278 refers to “*bulto o pieza perdidos o averiados*” (“*lost or damaged package or piece*”), so a box or a bag is deemed a *bulto* (package). A *pieza* (piece) will be anything that is not packaged. Taking in consideration that the weight is not considered under Argentine law for these purposes, huge unpackaged machines may be subject – from the point of view of the cargo interests – to a low limit. In order to obtain in Argentina a higher degree of indemnification in case of loss or damage to such cargo, the value of these types of machines should be declared and inserted in the bill of lading.

5.3. Package or Unit: Bulk Cargo

By definition, bulk cargo is unpackaged cargo and the concept of *unit* in relation to it seems clearly inapplicable (should a grain of corn be considered a *unit*?). It may therefore be the case that there is no limitation of liability in respect of bulk cargo.

In the Carriage of Goods by Sea Act of the United States (COGSA), the problem of bulk cargo has been addressed by section 4(5) providing that, in case of goods not shipped in packages the carrier can limit its liability to US\$500 “*per customary freight unit*”. The same solution has been adopted by article 278 of the Argentine Navigation Act, which is deemed applicable even when the contract is governed by the Hague Rules.

Nevertheless, the wordings of the COGSA and the Argentine Navigation Act differ from the wording of the Hague Rules, so in other countries the conclusion was that when the Hague Rules apply, bulk cargo does not allow the carrier to limit its liability⁴.

The problem with bulk cargo has been solved under the Visby Rules by adopting an additional criterion in order to establish the amount of the limit. Under the new wording of article 4.5(a) of the Hague-Visby Rules, not only the number of packages or units is to be considered but also the *gross weight of the goods lost or damaged* when the limit that results from it is higher than the limit that results from the number of packages or units.

This amendment also solves some other inconsistencies of the Hague Rules, pursuant to which the limit applicable to a standard bag or a box was the same as that of a car, truck, large machinery, etc., regardless of their weight.

⁴ See GRIGGS et al., *Limitation...*, p. 137.

5.4. Number of Packages to be Considered to Establish the Amount of the Limit

The Hague Rules do not specifically address the issue of what number of packages or units are to be considered in order to establish the limitation amount: the number of packages or units mentioned in the bill of lading or the number of packages or units actually lost or damaged?

The issue is solved under the Visby Rules, favouring the second alternative (i.e., the number of lost or damaged packages or units). Nevertheless, and notwithstanding the silence of the original version of the Hague Rules in this respect, it has been considered that the solution is the same that results from the Visby version⁵.

5.5. Loss of Benefit of Limitation of Liability

The Visby Rules introduced a new paragraph in article 4.5 of the Hague Rules. Under article 4.5(e) of the Hague-Visby Rules, the carrier is not entitled to limit its liability if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with knowledge that a damage would probably result.

Argentina also adopted this approach under article 278 of the Navigation Act. Although I have no knowledge of the application of this rule in cases governed by the original version of the Hague Rules, I think it is very likely that even in that case, Argentine courts would apply this Visby rule (more than once, the provisions of the Navigation Act have been applied by Argentine courts to construe the Hague Rules).

5.6. The Protocol of 1979 (SDR's)

The Protocol of 1979 amended the Hague-Visby Rules by introducing a different unit of account: the Special Drawing Right (SDR), as defined by the International Monetary Fund (IMF), instead of the Franc Poincare. In paragraphs 10, 11 and 12 of this presentation I will come back to the issue of “gold vs. SDR”.

6. The Hamburg Rules

The Hamburg Rules have been adopted by three Latin American countries: Chile, the Dominican Republic and Paraguay.

Article 6.1(a) of the Hamburg Rules of 1978, follows (with higher limits) the criteria of article 4.5 of the Hague-Visby Rules, as amended by the 1979 Protocol, so the limits are established by reference to the number of packages or units lost or damaged, or by reference to their weight.

⁵ GRIGGS *et al.*, *Limitation...*, p. 142.

6.1. Delay

Under the Hamburg Rules carriers are entitled to limit their liability in cases of delay “to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea” (article 6.1(b) of the Hamburg Rules). In no case, however, the aggregate liability of the carrier for loss or damage, and for delay, shall exceed the limit applicable to a total loss of the cargo (article 6.1(c) of the Hamburg Rules).

In Argentina, where the original version of the Hague Rules apply, the Federal Court of Appeals of Buenos Aires admitted the carriers’ right to limit their liability in cases of delay, but the limit is not calculated upon the amount of the freight or a multiple of it. The limit is calculated instead as if in the case of lost or damage cargo: 100 pounds sterling per package or unit delayed⁶.

7. The Rotterdam Rules

Article 59.1 and 2 of the Rotterdam Rules of 2009 follows the Hamburg Rules with certain differences.

For instance, they equate the term “vehicle” with “container, pallet or similar article of transport used to consolidate goods”.

Another difference – and this is a significant one – is that in the Hague Rules, the Hague-Visby Rules and the Hamburg Rules, the limitation may be invoked in case of “goods lost and damaged”. Under article 59.1 of the Rotterdam Rules the carrier may invoke the limit in any event of breach of “its obligations under this Convention”.

The following obligations have been mentioned by scholars among those that may be breached by the carrier without losing the benefit of limitation of liability: the obligation of article 35 to issue a transport document with the particulars of article 36; the obligation of article 40 to qualify the information related to goods if the carrier has actual knowledge or has reasonable grounds to believe that any material statement in the transport document is false or misleading; the obligation of articles 45 to 47 related to the delivery of the goods; and the obligation to execute the instructions of the controlling party which results from article 52⁷.

⁶ Civil and Commercial Federal Court of Appeals of Buenos Aires city, Division 2, in re “*Deutz v. ELMA*”, 1979, La Ley 1979-D-3.

⁷ Kofi MBIAH, *The Convention on Contracts for the International Carriage of Goods wholly or partially by Sea: The liability and the limitation of liability regime*, CMI Yearbook 2007-2008, Athens I, Documents for the Conference, p. 297; Jan RAMBERG, *UN Convention on Contracts for International Carriage of Goods wholly or partially by Sea*, CMI Yearbook 2009, Athens II, Documents of the Conference, p. 278; Knud PONTOPPIDAN, *Shipowners View on the UNCITRAL Convention on Contracts for the International Carriage of Goods wholly or partially by Sea*, CMI Yearbook 2009, Athens II, Documents of the Conference, p. 288.

8. *An Overview of the Provisions of the Rotterdam Rules on Carriers' Limitation*

At a first glance, the following comments may be made in respect of the provisions of the Rotterdam Rules on carriers' right of limitation:

- The rule of the limitation follows the general trend in previous international conventions (chapter 12 of the Rotterdam Rules).
- In line with the general trend, cargo owners are not beneficiaries of the limitation of liability.
- The unit of account is Special Drawing Right (SDR) of the International Monetary Fund (article 59.3). The issue of the amount of the limits will be addressed below (see chapter IV of this presentation).
- The new convention adopts a dual standard in order to fix the amount of the limits: the traditional *per package* limitation and the *per kilogram* limitation, whichever is higher (article 59.1). This solution solves the problem of unpackaged cargo of significant volume and weight.
- When goods are carried in or on a container, pallet or similar article used to consolidate goods, or in a vehicle, the packages or shipping units enumerated in the bill of lading as packed in or on the article of transport or vehicle are deemed packages or shipping units. If the goods in or on the article of transport or vehicle are not enumerated, each article or vehicle are deemed a shipping unit (article 59.2).
- The packages or units to be considered for the purpose of establishing the amount of the limit are the packages or units subject to the claim or dispute, not the total of the cargo covered by the bill of lading (article 59.1).
- Carriers are entitled to limit their liability in any event of breach of their obligations under the Convention (article 59. 1.) (see above, third paragraph of number 7).
- The benefit of the limitation of liability is not available to those who incurred in a personal act or omission with the intent to cause *the loss (such loss)* or recklessly and with knowledge that *the loss (such loss)* would probably result; the burden of the proof rests on the claimant (article 61.1 and 2). Since the rule requires a *personal act* by the person claiming a right to limit, the conduct of servants or agents is not an obstacle for the carrier to limit its liability. When referring to the loss, this provision specifically mention "*such loss*"; in my opinion, the use of these words means that the *intent* should be directed to cause the loss actually occurred and the *knowledge* should be the knowledge that the loss actually occurred would probably result.
- Application of the Convention does not affect the application of international conventions or national laws regulating the *global* limitation of liability of vessel owners (article 83). In my opinion, the words *vessel owners* include other beneficiaries of the global limitation systems.

9. Common Provisions in the Different Conventions or Rules

There are some common provisions in all the conventions or rules considered above. For example:

- In case of loss or damages to the goods, the total amount recoverable is the value of the goods at the place and time at which the goods are or were supposed to be discharged from the ship.
- The amount of the limitation must be calculated with reference to the number of packages or units which are the subject to the claim, but not with reference of the number of packages or units enumerated in the bill of lading.
- Those who are entitled to the benefit of the limitation of liability, may lose the benefit if the claimant proves privity or recklessly.
- Agreements modifying the figures of the limits are valid, provided the agreed figures do not reduce the limit set forth in the conventions.
- The limitation of liability of the carrier applies even in respect of non-contractual claims.
- The limits set forth in the conventions are not applicable when the nature and the value of the goods have been declared by the shipper before the shipment and inserted in the bill of lading.
- The rules of the conventions do not affect carriers' rights under any statute regarding the limitation of the liability of shipowners, so carriers are allowed to invoke the limitation of liability under the applicable convention or rules on the carriage of goods by sea, and if this limit is higher than the general limit (i.e., higher than the value of the ship or than the tonnage limitation, whichever may be applicable), the general limit may be invoked.
- Shippers and cargo owners lack the benefit of limiting their liability.

IV. Amount of the limits and conversion into local currencies

10. Conversion into Local Currencies of the Carriers' Limits of Liability under the Conventions

Gold has been in the past, and Special Drawn Rights (SDRs) are today, resources used by international conventions to establish limits of liability, in an attempt to avoid or minimize the effects of inflation.

11. The Gold Sterling Pound in the Hague Rules

In the Hague Rules the limit is established in article 4.5: “100 pounds sterling per package or unit, or the equivalent of that sum in other currency”. Under article 9, the pounds sterling “are to be taken to be gold value”.

Argentine courts have always decided that references to *gold* or *gold value* in some conventions —such as the Hague Rules in the field of the maritime law and in other conventions on aviation law— mean that, in order to determine the equivalence in other currencies, the current market value of the gold must be considered⁸.

The current market value of the gold has been also accepted by the courts of the United Kingdom in 1988 and by the Singapore High Court in 1992.

Although Uruguay is not a party to the Hague Rules, it is still applied by Uruguayan courts when Uruguayan rules on conflicts of law so provide or when the parties to a contract have so agreed. According to qualified scholars, the market value of the gold should be taken in consideration in order to convert the gold pounds sterling into local currency⁹.

The gold market value is also considered for the conversion of the 100 pounds sterling of gold into the Peruvian local currency¹⁰.

However, the market value of the gold was not admitted in a number of countries, especially during the first years of the Hague Rules.

William Tetley explains that the value of gold has been subject to significant changes since 1924 so, based on the second paragraph of article 9, several States parties to the Hague Rules opted to translate the sums indicated in pounds sterling into their own currencies, in the understanding that the conversion could be done at any time and did not need to be updated¹¹.

Upon ratifying the Hague Rules, the United States made a reservation stating that the limit will be US\$500, and a number of countries adopted the limitation in local currency, such as Belgium, Canada, Ireland, New Zealand, Portugal, Spain, Switzerland, Syria and Turkey.

The obvious consequence of the abandonment of the current market value of the gold, was that the inflation affected the limit of liability established in local currencies. Tetley also explains that the United Kingdom could not convert the gold sterling pound into another currency because the pound sterling was (and still is) its own currency. In order to avoid the consequences of the uncertainty and instability in the value of the gold a consensus was reached in the United Kingdom, known as the *Gold Clause*

⁸ Federal Court of Appeals of Buenos Aires, Civil and Commercial Division, in re “m.v. *Río Atuel*”, 1967, La Ley 127-178).

⁹ Fernando AGUIRRE RAMÍREZ and Cecilia FRESNEDO DE AGUIRRE, *Curso de transporte. Transporte marítimo. Contratos*, Montevideo, Fundación de Cultura Universitaria, 2002, vol. III, p. 186. It is also the opinion of Gabriela VIDAL, who has been consulted on this issue by the author of this presentation.

¹⁰ Peruvian bases for to conversion have been informed to the author by Katerina VUSKOVIC.

¹¹ William TETLEY, with the assistance of Marc NADON, *Marine cargo claims*, Toronto, Butterworths, 1978, Second edition, p. 444/446.

Agreement, pursuant to which the per package limitation was fixed at “200 sterling lawful money of the United Kingdom” rather than at gold value. Nonetheless, today the 1988 court precedent mentioned above is the rule.

12. *The Visby Rules*

The Brussels Protocol of 1968 (the Visby Rules) adopted a unit known as *Franc Poincaré* and gave a new wording to article 4.5(a) of the Hague Rules.

The new limits were “*10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher*”.

The *Franc Poincaré* is defined in the new article 4.5(d) of the Hague Rules as “*a unit consisting of 65.5 milligrams of gold of millesimal fineness 900*”.

The idea was that the gold unit would be the weapon to avoid the consequences of the loss of real value of the national currencies. Nevertheless the problem was not solved because a number of countries gave an *official* value to the gold and the current market value conflicted with the official value.

In Ecuador – where the Visby Rules have been adopted – the conversion of the *Poincare Francs* into local currency is calculated considering the market value of the gold¹².

In addition, the Visby Rules resulted in a lower limit in those countries that were a party to the Hague Rules in which the current market value of the gold has been adopted.

13. *The Brussels Protocol of 1979*

The Brussels Protocol of 1979 gave a new wording to article 4.5 of the Hague-Visby Rules.

In Latin America the Protocol has been ratified by Mexico, and its figures have been adopted in the internal law of Venezuela.

In this version of the Hague-Visby Rules, the unit of account is the IMF Special Drawing Right (SDR).

The limits are “*666.67 units of account per package or unit or two units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher*”.

This amendment to the Hague Rules improved the level of the limit of liability compared to the levels resulting from the previous amendment, but the new limit is still significantly lower than the limit that results from the market value of the gold contained in 100 sterling pounds.

¹² This has been informed to the author this presentation by José Modesto Apolo.

Limitation of Liability in the Rotterdam Rules, by Alberto Cappagli

14. The Hamburg Rules

The Hamburg Rules adopted the SDR that has been previously adopted by the Brussels Protocol of 1979.

The limits are “835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher”.

The Hamburg Rules further improved the level of the limit of liability of the carrier *vis-à-vis* the 1979 Protocol, but it is still significantly lower than the limit resulting from the market value of the gold contained in 100 sterling pounds.

15. The Rotterdam Rules

The Rotterdam Rules maintain the SDR as the unit of account and again improves the level of the limit compared to the Hamburg Rules; yet it is still far from the level resulting from the market value of the gold of the 100 sterling pounds.

The limits in the Rotterdam Rules are “875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever is higher”.

16. The Limits under the Different Conventions and Protocols Converted into US Dollars

Taking into consideration that: a) the value of the gold on September 10, 2010 was in the region of US\$1,246 per troy ounce, and b) the value of a SDR is in the region of US\$1.50, the different limits of liability of the carrier on September 10 was:

Per package or unit limit

Convention	Units of account	Limit per package or unit
HAGUE RULES	100 pounds sterling	US\$29,307 approx.
VISBY RULES	10,000 francs	US\$23,600 approx.
PROTOCOL 1979	666.67 SDRs	US\$1,000 approx.
HAMBURG RULES	835 SDRs	US\$1,252.50 approx.
ROTTERDAM RULES	875 SDRs	US\$1,312.50 approx.

Per kilo limit

Convention	Units of account	Limit per kilogram
VISBY RULES	30 francs	US\$70,80 approx.
PROTOCOL 1979	2 SDRs	US\$3 approx.
HAMBURG RULES	2.50 SDRs	US\$3.75 approx.
ROTTERDAM RULES	3 SDRs	US\$4.5 approx.

In order for a package or unit to be valued at 100 gold pounds sterling under the different conventions, it must weight:

- 423.73 kilograms under the Visby Rules.
- 10,000 kilograms under the 1979 Protocol.
- 8,000 kilograms under the Hamburg Rules.
- 6,666 kilograms under the Rotterdam Rules

17. Countries that Are Not a Party to the International Conventions

Some Latin American countries have not ratified nor adopted the principles of any of the international conventions on carriage of goods by sea; in some of these countries the maritime law is governed by codes inspired in the French Commercial Code of 1807 and other continental codes of the 19th century.

In some of these countries, apart from the general limitation available to shipowners – based on the value of the vessel at the end of her voyage – the only limit of liability available to the carrier is the market value of the goods in the port of destination. As a result, courts in these jurisdictions often find null and void the clauses inserted in bills of lading limiting the carrier's liability.

For example, in Uruguay, although the case law is not uniform, a number of courts reject limitation clauses. Other Uruguayan courts admit the limitation clauses when the amount of limitation appears to be reasonable¹³.

Brazil is another country that is not a party to international conventions on the carriage of goods by sea, so the carriers' limitation of liability regime is governed by its domestic law.

Under the Brazilian Civil Code, the carrier's liability is limited to the declared value of the cargo in the bill of lading. The amount of the limit is an issue, however, when the value of the cargo has not been declared in the bill of lading. Some argue that, in this case, the value of the cargo may be proved with the invoices. Others favour the application of the limit established under the multimodal transport regime: i.e., 666.67 SDRs per package or 2 SDRs per kilogram¹⁴.

V. The Montevideo Declaration

On October 22, 2010, a group of distinguished maritime lawyers published the *Declaración de Montevideo*, recommending governments and

¹³ Fernando AGUIRRE RAMÍREZ and Cecilia FRESNEDO DE AGUIRRE, *Curso... Transporte marítimo*, Fundación de Cultura Universitaria, Montevideo 2002, vol. III, pp.216 et seq.

¹⁴ The information on the Brazilian law has been obtained from Artur R. Carbone.

parliaments not to adopt the Rotterdam Rules.

Some of the main concerns of these colleagues is the low level of the limits of liability and the fact that the benefit if limitation is only available to carriers and not to the shippers.

The *Declaración of Montevideo* has been considered by a qualified group of CMI members who participated in the drafting of the Rules. They argue that with the limits established in the Rotterdam Rules “*all but the most valuable shipments will be entitled to full recovery*”, so “*those few shippers who ship cargo that is more valuable than the limitation levels can decide for themselves whether to declare the full value (effectively buying extra insurance from the carrier) or buy insurance elsewhere, knowing that the carrier will not be liable above the limitation levels*”.

Regarding shippers’ limitation of liability the CMI members who participated in the drafting of the Rules explain that UNCITRAL tried to formulate a limitation system for the shippers’ liability but no workable solution has been found. They also pointed out that no convention on the carriage of goods by any means of transport provides a limit on shippers’ liability, and that the Montevideo Declaration does not present a proposal to that effect.

VI. The point of view of the Argentine Maritime Law Association

On April 27 and 28, 2009, the Rotterdam Rules have been considered and debated in a Plenary Session of the Argentine Maritime Law Association.

As a result of these discussions the Executive Council of the Association considered that the Rotterdam Rules:

- do not conflict with the principles of Argentine maritime law; and
- address issues that were not specifically addressed in the past by the legal system.

But:

- the adoption of an international convention establishing a limit of liability significantly lower than the limit currently in force in Argentina is a political issue that must be decided taking into account the commercial interests involved.

AN ANALYSIS OF THE SO-CALLED MONTEVIDEO DECLARATION

THE FACTS

(The text of the “Montevideo Declaration” (MD) appears inside the boxes below, while the italicized text that follows each box addresses each concern raised. Note that the English translation of the MD found inside the boxes below is the one provided by the drafters of the MD, except for the first sentence of paragraph 14, which had been omitted in the translation provided by the drafters, and for reference to the Spanish terms in paragraph 6, the inclusion of which appears to be fundamental to understanding the concern expressed.)

A group of citizens and experts in Maritime Law, who are against their respective countries ratifying and becoming parties to the so-called “Rotterdam Rules” (“Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea”, which was opened for signature on 23rd September 2009 in Rotterdam), have agreed to issue the following Declaration:

1. The aforementioned Convention is seriously detrimental to import and export firms in Latin American countries, almost all of which are dependent on international carriage by sea.

If the Rotterdam Rules were “inappropriate” for shippers and consignees in Latin America, they ought to be similarly “inappropriate” for shippers and consignees in other continents, but it would appear that this is not the case for North America (or at least for the United States) or for Africa, while in Europe the views of shippers are divided. In any event, the reasons for this opinion ought to be stated in subsequent points so that they could be addressed, but no reasons for the view expressed have been given in this paragraph.

2. Not only does it fail to provide equity and reciprocal benefits in international trade but in itself the Convention constitutes a highly complex juridical instrument with a regulatory approach which is full of references from one provision to another and contains definitions that are tautological. Furthermore, it introduces a maritime neo-language that invalidates a great amount of international case law created since 1924 and which, due to its deficient legislative technique, gives rise to very different interpretations.

a) The Rotterdam Rules are “highly complex”: *There is no doubt that the Convention is more complex than the Hague-Visby Rules and the Hamburg Rules, even though it may also be stated that the Hamburg Rules are more complex than the Hague-Visby Rules. But this is due, on the one hand, to the fact that the Rotterdam Rules attempt to ensure uniformity in areas of transport law not covered by the previous conventions (e.g. electronic equivalents to paper documents, right of control during carriage, delivery) and, on the other hand, to the fact that the Rotterdam Rules try to better regulate areas already regulated in the previous conventions (e.g. the obligations and liability of the shipper).*

One should also keep in mind that the complexity of a convention should not be assessed by simply counting the number of articles or the length of each provision. For instance, the provision of the contracts excluded from the scope of application of the Rotterdam Rules is much more “complex” compared with the Hague and the Hague-Visby Rules. However, is the situation improved if the article simply states, along the lines of the Hague and the Hague-Visby Rules, that “This Convention does not apply to charterparties”? Such a simplified text would leave much scope for national courts to decide whether or not to apply the Convention, which would in general lead to a much reduced degree of harmonization. A balance must be struck between “lengthy or complex” and precision and predictability.

b) The Rotterdam Rules are ‘over-regulatory’: *The question must be asked whether it has really been a mistake to regulate additional areas of transport law. Is this approach really adversely affecting shippers and consignees?*

c) The Rotterdam Rules are full of cross-references between provisions: *Indeed, there are many cross references, but, with respect, that is an appropriate legislative technique widely adopted and accepted both at international and national levels.*

d) There are in the Rotterdam Rules “tautological definitions”: *The only tautological definitions appear to be those of “non-liner transportation”,*

“nonnegotiable transport document” and “non-negotiable electronic transport record”. This approach was used to avoid creating uncertain empty areas between “liner transportation”, clearly defined, and transportation other than liner transportation (the same reasoning would apply to the other two definitions). In any event, the meaning of that definition is quite clear and should not cause confusion.

e) The Rotterdam Rules introduce “a maritime neo-language that invalidates a great amount of international case law created since 1924 and which, due to its deficient legislative technique, gives rise to very different interpretations”: *It is not clear to which terms reference is being made; if reference is made to “right of control”, indeed it is new, but that is due to the fact that that right, which is exercised in practice, had not previously been the subject of legislative regulation and therefore it is obvious that the jurisprudence on the Hague-Visby Rules is of no avail. As to whether the legislative technique of the Rotterdam Rules is deficient, perhaps it should be explained in what matter it is seen to be deficient. Furthermore, a review of the travaux préparatoires indicates that the drafters intended that the Rotterdam Rules actually preserve a great deal of the terminology used in the Hague, Hague-Visby and Hamburg Rules so as to preserve as much of the existing case law and doctrine as possible.*

3. It represents a retrogressive step in the standards and practices prevailing in multi-modal carriage, since it excludes other means of transport whenever shipment by sea is not involved – for it only regulates the marine carriage leg and associated transport (maritime plus). Moreover, it is not *per se* a convention of universal and uniform scope, as it allows exemptions to its own provisions, for example, in the case of “volume contracts”. In addition, it leaves the door open for states not to ratify the rules on Jurisdiction and Arbitration (Chapters 14 and 15) which means these provisions are not compulsory for contracting parties.

a) Multimodal carriage: *The Rotterdam Rules do not intend to replace the United Nations Convention on International Multimodal Transport of Goods or UNCTAD/ICC Rules for Multimodal Transport Documents. Rather, they replace the Hague and Hague-Visby or the Hamburg Rules. It is not correct to see Rotterdam Rules as an “imperfect” multimodal transport law convention. It should be understood as an expanded maritime transport law convention (“maritime-plus”), and in this sense, they are clearly not “a step backwards”.*

b) *Volume contracts: The Rotterdam Rules allow a certain degree of flexibility for the parties in connection with “volume contracts”, which must be freely negotiated. The issue is not whether broader uniformity is desirable or not, but instead to what extent the mandatory rules of the carrier’s liability regime should govern all contracts of carriage, regardless of the level of sophistication and bargaining power of the contracting parties.*

c) *Jurisdiction and Arbitration: Each state has its own interests with respect to the preferred approach to jurisdiction and arbitration rules, and an acceptable compromise of those national interests is not easily found. If the Rotterdam Rules did not contain opt-in chapters on jurisdiction and arbitration, the likely number of ratifications would be substantially decreased. It should be noted that the rules on jurisdiction and arbitration differ considerably from state to state, and providing the opportunity for at least some level of harmonization in these important areas cannot be seen as “a step backwards”.*

4. It introduces expressions that in juridical terms bear little or no significance to transportation contracts, such as: volume contract, regular or non-regular liner transportation, performing party and maritime performing party. These terms change neither the concept nor the purpose of contracts of carriage.

Article 1 of the Rotterdam Rules introduces a great number of definitions which are, without exception, relevant in applying and understanding the Convention. The comments below are not comprehensive, but they are intended to demonstrate the need for definitions in general and the need for the definitions mentioned in paragraph 4 of the MD, in particular.

To the extent that any definition has to do with the “scope of the contract of carriage”, that definition is of great relevance.

First, in order to understand the scope of application of the Rotterdam Rules, the definition of “contract of carriage” in article 1(1) is of importance. That concept is then further specified in articles 5 and 6. The same is true concerning the definitions in Article 1(3) and 1(4) on “liner transportation” and “non-liner transportation”.

The aim of the Rotterdam Rules is to maintain at least the same scope of application as currently exists in the case of the Hague Rules and the Hague-Visby Rules, but to make these provisions even clearer than before. While the issuance of a bill of lading is the key underlying factor of the scope of application of the Hague and Hague-Visby Rules, in reality, other factors like the nature of the trade plus certain contractual and documentary aspects provide a more precise method of appropriately defining the scope of application of the Convention.

Rotterdam Rules

As such, the scope of application provisions of the Rotterdam Rules look different from the Hague and Hague-Visby Rules. But, in their application, there are no dramatic differences between the present major regimes and the Rotterdam Rules. In fact, cargo interests will have greater protection under the Rotterdam Rules than under the Hague or Hague-Visby Rules due to the fact that the application of the Rotterdam Rules is not tied to, and thus restricted by, the issuance of a particular type of document.

The definition of “volume contract” in article 1(2) is absolutely necessary. First, it clarifies that the volume contract is a contract of carriage and that the Rotterdam Rules might or might not be applicable due to the separate scope of application provisions. Second, volume contracts have a special status within the Rotterdam Rules pursuant to article 80, which allows contracting parties, and in some cases, third parties, to deviate from the mandatory framework of the Rotterdam Rules under certain preconditions enumerated in that provision. Third, the definition of volume contract is relevant for choice of court agreements as specified in article 67.

As the Rotterdam Rules are of “maritime plus” nature, meaning that the Rules can be applied in pure sea carriage and also in sea carriage combined with another mode of transport, it was necessary to define the “performing party” in article 1(6). The liability of a non-maritime performing party, for example, a road haulier or road carrier, is not regulated in the Rotterdam Rules. However, it is necessary to define these parties, for example, to specify when the goods have been received for carriage and when they have been delivered at the destination. In this context, the performing party plays a role as found in article 12 of the Rotterdam Rules, which defines the period of responsibility of the carrier. Another example of the need for such a definition is that the vicarious liability of the carrier covers any performing party in accordance with article 18 of the Convention.

The status of the “maritime performing party”, a sub-category of the performing party and defined in article 1(7), is also necessarily regulated, but separately from the performing party. The maritime performing party carries a kind of independent liability as regulated in article 19. It is natural that the Rotterdam Rules might be applicable to such a maritime performing party, as it is a question of sea carriage or a sea carriage link as well. Further, jurisdiction issues that relate specifically to the maritime performing party are regulated in article 68 of the Convention.

5. It introduces the concept of the “documentary shipper”, which is different from the shipper, although the Convention itself admits that this person is not in fact the other party to the contract of carriage. It also removes the concept of the transit agent or cargo transit agent.

a) Documentary shipper: *The legal status of the person who appears in the*

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transport document as the shipper but is not really a contracting party is not clear under the previous conventions or under applicable national laws. The Rotterdam Rules address this issue and provide a uniform solution for this situation. The “documentary shipper” is nothing more than a shorthand way of referring to such legal situations, and does not intend to bring any substantial change for the conceptual framework with respect to the contracting parties.

b) Freight forwarder and cargo forwarding agents: *The Rotterdam Rules did not “remove” the concepts of freight forwarders (“transit agents”) or cargo forwarding agents (“cargo transit agent”). These concepts were not used in the Hague, Hague-Visby or Hamburg Rules and the Rotterdam Rules simply continue this tradition. The reason why the Rotterdam Rules do not use these concepts is that freight forwarders or cargo forwarding agents are involved in a contract of carriage in a different capacity depending on the particular situation. Because freight forwarders or cargo forwarding agents play different roles depending on the cases, the Rotterdam Rules regulate them based on the roles they play (carrier, shipper, maritime performing party, etc.). For instance, if a freight forwarder undertakes to carry the goods to its customer, it is a carrier under the Rotterdam Rules. If a freight forwarder enters into a contract with a sub-carrier in its own name, it is a shipper under the Rotterdam Rules. If a freight forwarder enters into a contract with a carrier on behalf of a customer (as an agent), it is not the carrier or the shipper under the Rotterdam Rules and is not liable as such (nor is it usually a “maritime performing party”).*

6. It removes the terms “consignatario”¹ and endorsee of the cargo² which are time-honoured expressions employed for almost two centuries in international legislation, case law and practice. These terms are replaced by others with no juridical significance such as transport document holder, “destinatario”, right of control and controlling party.

The importance of the definitions in the Rotterdam Rules has already been discussed, and all of the terms referred to in the last sentence of paragraph 6 of the MD have a definition in the Rotterdam Rules that clarifies their precise meaning. This simple fact disproves the suggestion that such terms are legally meaningless or have no juridical significance.

It is true that there are indeed some terms that are new in the Rotterdam Rules

¹ The English translation provided by the drafters of the MD translates this word as “cargo broker.”

² The English translation provided by the drafters of the MD translates this word as “cargo agent”.

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as compared with existing maritime carriage conventions, such as the “right of control” and the “controlling party”. However, these terms, as previously stated, are not only already known in international practice, they have been carefully defined and their implications clearly laid out in the Convention.

The rest of the terms referred to in paragraph 6 of the MD, are not only defined in the Rotterdam Rules (Article 1, pars. 10 and 11), they are by no means new in contract of carriage terminology. The term “destinatario” is already widely used in some national and international instruments, such as in the Agreement on International Multimodal Transport between the States Parties to the MERCOSUR, in Decision 399 of the Andean Community on Road Carriage, or in the Spanish version of the 1999 Convention for the Unification of Certain Rules for International Carriage by Air. “Destinatario” is considered clearer than “consignatario”, precisely because of the fact that this latter term is ambiguous and has created some confusion, for it can refer to persons other than the one entitled to claim delivery of the goods at destination under the contract of carriage (for instance, to the cargo agent authorized by the consignee to collect the goods from the carrier). Likewise, the term “holder” of the transport document is very widely employed in much national legislation and in the existing international rules on the contract of carriage by sea (e.g., in the Hamburg Rules). In such rules, and certainly in the Rotterdam Rules, the term comprises any endorsee of the bill of lading (and to that extent “endorsee of the cargo”).

For the foregoing reasons, it cannot be stated that the terminology and the concepts relied upon by the Rotterdam Rules will entail a dramatic change with respect to previously-used terms. Much to the contrary, they are intended to preserve terms and concepts already used, while increasing clarity, and introducing some new concepts that are thought to improve the law applicable to the contract of carriage.

7. It removes the term bill of lading, also a traditional concept used in all international legislation, case law and practice, to be replaced by vague expressions such as transport document or electronic transport document.

The Rotterdam Rules have a much wider scope of application than the Hague and Hague-Visby Rules. Thus, as noted above in response to paragraph 4 of the MD, the Rotterdam Rules apply irrespective of whether a bill of lading or some other transport document (or no transport document at all) has been issued. Consequently, they apply to both bills of lading and other types of transport documents, such as sea waybills. It was necessary, therefore, to use the generic term “transport document” rather than the narrower concept “bill of lading”. This is similar to the approach of the Hamburg Rules. The term is qualified and given a more precise content in both the definitions

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(articles 1(14)-(16)) and in the substantive rules, e.g. article 46, so that the substantive rule will depend upon which type of document is issued, e.g. a bill of lading, a sea waybill, etc. The regulation in the Rotterdam Rules of the electronic equivalent of paper documents in maritime transport is a novelty as compared with the existing conventions and a new term therefore had to be inserted. The term “electronic transport record” is in line with other conventions on e-commerce, and the introduction of this regulation is one of the most important aspects of the Rotterdam Rules.

8. It errs in stating that the replacement for the Bill of Lading (namely the transport document) is the contract of carriage when it is really nothing more than evidence of the existence thereof. Furthermore, its other functions such as a mate’s receipt for merchandise on board and credit note are ignored.

The assertion in paragraph 8 seems to be based on a misapprehension; the term “transport document” comprises more than the bill of lading, also including, for example, sea waybills. The term is defined in article 1(14), pursuant to which paragraph (b) stipulates that the transport document can either evidence or contain the contract of carriage. Further, under article 1(14)(a), the transport document must evidence the receipt of the goods. Moreover, a transport document may be negotiable as defined in article 1(15). Consequently, a negotiable bill of lading would be deemed a negotiable transport document under the RR and be subject to, inter alia, article 41(b)(i) on the evidentiary effect of the contract particulars, and article 47 on the delivery of the goods. The traditional functions of the bill of lading are, thus, maintained in the Rotterdam Rules.

9. It allows special clauses to be inserted into the transport document, thus altering the current one, which is only admissible in freely negotiated charter parties.

While it is not completely clear what this paragraph of the MD is complaining of, the issuance and content of the transport document is regulated in chapter 8 of the Rotterdam Rules. Any further clauses in the transport document will be void if they excluded or limited the carrier’s obligations or liability, or increased the shipper’s obligations or liability as set out in the Rotterdam Rules, cf. article 79. This situation is no different from that under the current conventions.

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10. It accepts the validity of adhesion clauses incorporated into transport documents that attribute exclusive jurisdiction to the courts that the carrier may choose. In practice, this means that claimants will be bound always to bring suits in the courts where the carrier has its domicile, thus excluding the courts of States that are users of transportation services. In particular, this will prevent a shipper claiming breach of contract from having recourse to the courts in the place of delivery.

First, it should be recognized that chapter 14 of the Rotterdam Rules is subject to “opt-in” by a Contracting State, and that article 67 applies only if a Contracting State makes a declaration to apply the provisions in chapter 14. If a State does not support the rule on exclusive jurisdiction clauses under Rotterdam Rules, it should simply ratify the Convention without additional action.

If a State does opt into the chapter on jurisdiction, article 67 allows an exclusive jurisdiction clause only in limited circumstances. First, an exclusive jurisdiction clause is allowed only in volume contracts (article 67(1)(a)). In all other cases, claimants always have the option to bring an action in the places listed in article 66. Second, even for the exclusive jurisdiction clause contained in a volume contract, article 67 requires several conditions for its validity. The requirements are even more stringent for the clause being valid vis-à-vis third parties (article 67(2)).

Therefore, it is not at all accurate to state that the Convention “accepts the validity of adhesion clauses incorporated into transport documents that attribute exclusive jurisdiction to the courts that the carrier may choose”.

11. It does not apply to transport documents or bills of lading issued under charter parties relating to the whole or part of a ship, which is a standard commercial procedure with many years of untroubled application behind it.

At the preparatory stage of the Rotterdam Rules, the States negotiating the text decided early on that the bill of lading should not play a prevalent role in the regime to the same extent as they do in the Hague and the Hague-Visby Rules. It was agreed there was no commercial need to emphasize the legal role of this particular document.

This approach does not mean, however, that the Rotterdam Rules have made bills of lading irrelevant; rather, the particular term “bill of lading” is simply

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not reproduced. When reading the definition of “negotiable transport document” in article 1(15) of the Rotterdam Rules, it is clear that the bill of lading is still regulated as a negotiable transport document. The electronic alternative is defined in article 1(19).

Importantly, the bill of lading or a negotiable transport document is not the decisive factor in determining the scope of application of the Convention,³ which is mainly regulated in articles 5 to 7.

The Rotterdam Rules are mandatory, unless otherwise mentioned in a particular provision, as further specified in article 79. This means that once the Rotterdam Rules apply to the contract of carriage, the mandatory protection in the regime operates to the benefit of the contracting parties and any third party who has a legal interest in the goods carried or to be carried. If the contract of carriage is not covered by the Rotterdam Rules, the situation is different. For example, a voyage charter party used in non-liner trade does not fall under the scope of application of the Rotterdam Rules. It is thus open to the contracting parties, the charterer and the owner, to agree upon terms, including liability in case the goods are lost or damaged. National law might have restrictions, but in this case the restrictions do not derive from the Rotterdam Rules. This is exactly the same principle as found in the Hague and Hague-Visby Rules.

Once the contract of carriage is outside the scope of application of the Rotterdam Rules, it means that the legal status of a third party that has an interest in the goods must be discussed and solved. The approach in the Hague and Hague-Visby Rules is that any bill of lading issued under a charter party that regulates the relations between the carrier and the holder makes the Hague or the Hague-Visby Rules applicable in this particular relationship, as further specified in article I (b) of the Hague and Hague-Visby Rules.

In UNCITRAL, States discussed whether the protection of the third party in such a situation should be combined with a particular transport document or whether the status of the third party would be decisive. The latter view prevailed. According to article 7 of the Rotterdam Rules, certain third parties are protected by the Rotterdam Rules even if the basic contract of carriage, such as a voyage charterparty in non-liner trade, is outside the scope of application of the Rotterdam Rules. These third parties are specifically mentioned and they are: the consignee, controlling party or holder (that is not an original party to the charterparty). All these third parties are defined in article 1 of the Rotterdam Rules, see article 1(10), 1(11) and 1(13)

³ A transport document or an electronic transport record might be relevant in the exceptional situation regulated in paragraph 2 of article 6 of the Rotterdam Rules. This provision became necessary in order not to diminish the scope of application of the Rotterdam Rules as compared with the Hague and Hague-Visby Rules.

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respectively. Looking at the definition of “holder”, it becomes clear that the holder of a bill of lading is covered even if this is not separately mentioned in the Rotterdam Rules. As a matter of fact, the protection of third parties is wider under the Rotterdam Rules as compared with the Hague and the Hague-Visby Rules. Possession of a bill of lading is no longer necessary as long as the third party has the status of any of those groups of persons specifically mentioned in article 7 of the Rotterdam Rules.

12. It leaves the carrier free to decide whether to take goods on board or destroy them if such merchandise may at any time during the course of shipment become dangerous. It also relieves the carrier of liability for any natural loss, whether of weight or volume, without laying down specific limits for each type of merchandise. Moreover, it permits carriers to deviate without losing rights of exemption or limitation of liability due to such deviation.

a) Freedom of the carrier to reject or destroy goods: *Article 15, which grants the carrier the right to decline to receive or to destroy or render harmless goods, merely confirms principles that exist in the present conventions: see article 4.6 of the Hague-Visby Rules and article 13(2)(b) of the Hamburg Rules.*

b) Exoneration of the carrier from liability for loss due to natural wastage: *Article 17(3)(j) reproduces article 4.2(m) of the Hague-Visby Rules but, as is the case with all other events listed in that paragraph, is not an exoneration: proof of such an event or circumstance merely results in a reversal of the burden of proof.*

c) Right of deviation: *Article 24 does not allow the carrier to deviate, but merely provides that when applicable law provides that deviation constitutes a breach of the carrier’s obligations, the provisions of the Convention continue to apply: the purpose is to exclude the possibility that the deviation “destroys the contract”, as some common law jurisprudence has held in the past.*

13. It modifies the clear rules that previously governed carriers’ liability significantly by placing the burden of proof on the claimant (whether the shipper or the consignee) which substantially alters the current state of affairs. There is, however, no reason to abandon the traditional system whereby the person who suffers loss or prejudice only has to prove the existence of the contract of carriage and breach of its terms. To that extent, it is up to the carrier to demonstrate reliance on exemptions which may relieve it from liability.

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In view of the number of exemptions provided for, it is unclear whether the carrier now commits itself to a result, and the obligation on the carrier to look after the goods it receives on board disappears. But, if the essence of the contract is the duty to produce a result, this gives rise to a basic obligation on the carrier, namely to safeguard the merchandise.

With regard to loading and stowage on board the fact that carriers are allowed to transfer the responsibility for such operations to the shipper or other third party or parties means that the carrier is freed of its obligations to supervise and/or be responsible for proper stowage of the goods which may cause seaworthiness to be compromised.

a) **Burden of proof:** *It is hard to understand why it is being asserted that the rules are clearer under previous conventions or the Rotterdam Rules increase the burden of proof on the claimant.*

The burden of proof is not clearly stated under the Hague-Visby Rules or even under the Hamburg Rules. Articles 17(1) and (2) of the Rotterdam Rules explicitly codify the burden of proof under these conventions which is accepted in most jurisdictions.

It should be noted that articles 17(1) and (2) do not change the traditional rule at all: (i) The claimant (shipper or consignee) must only prove the loss, damage or delay or whatever caused it occurred during the carrier's period of responsibility ("breach") and (ii) the carrier must prove "the external cause that may exonerate it from liability".

b) **Standard of carrier's liability:** *It is correct that there are some important differences between the Rotterdam Rules and the Hague-Visby Rules. However, the differences indicate that the Rotterdam Rules substantially strengthen the carrier's liability.*

The list of perils is less extensive under the Rotterdam Rules. The major differences with the list under the Hague and the Hague-Visby Rules are the following: Error in navigation and in management is no longer a valid defence under article 17(3). While the "fire defence" still exists, the carrier cannot rely on the defence if the person referred to in article 18 (any performing party, employees etc.) caused the fire. (article 17(4)(a)). This is the same rule as in the Hamburg Rules.

In short, although article 17 of Rotterdam Rules might look like the Hague-Visby Rules, it is much more similar to the basis of liability under Hamburg Rules.

c) **"Obligation of result":** *The Rotterdam Rules do not change the nature of carrier's obligation under the contract of carriage (which is described as "obligation of result" (as opposed to "obligation of means") under some jurisdictions). This is why the claimant only has to prove loss, damage or*

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delay (or their cause) occurred during the period of responsibility under article 17 and does not have to prove the carrier did not exercise due care. "Obligation of result" does not mean that the obligor has no excuse for the result. Although the carrier's obligation under the contract of carriage was described as "obligation of result", the carrier is subject to fault-based liability under the Hague-Visby or the Hamburg Rules. The list of exonerations under article 17(3) which is shorter than the Hague-Visby is not inconsistent with carrier's obligation as "obligation of result".

d) *Seaworthiness obligation: Although article 13(2) allows the parties to agree that the shipper performs the stowage of the goods, the obligation under article 14 is not affected. Whatever the contents of agreement under article 13(2) is or which task the shipper actually performs under the agreement, the carrier is required to exercise due diligence to make and keep the ship seaworthy and cargoworthy – obligations that are now continuing obligations for the carrier.*

14. It sets nominal limits of liability for loss or damage – 875 SDR per package and 3 SDR per kilogram of gross weight – that entail a radical decrease of the limits set out in The Hague-Visby Rules. Furthermore, as the unit of account is a monetary unit that is subject to inflation, the passage of time will tend to lead to a progressive increase in carriers' irresponsibility. The limitation on liability for delay (two and a half times the value of the freight) seems insufficient too. In addition, the rules with respect to the amount of compensation due when the value of the goods has been declared are not clear either.

The limitation of liability only applies to the carrier but not to the shipper (Articles 17/24) whose liability is integral and unlimited. The carrier is therefore granted an unacceptable privilege.

a) *Sufficiency of the limitation on liability for loss or damage: If there are limits on liability, at least some cases will involve goods that are worth more than the limitation amounts. A limitation level that permits full recovery in every case is the same as no limitation whatsoever. The available empirical evidence suggests that the Hague-Visby Rules' combination of weight and package limitations (2 SDRs per kilogram and 666.67 SDRs per package) provides for full recovery in over 90% of all shipments. The estimate for the Hamburg Rules' limitation figures (2.5 SDRs per kilogram and 835 SDRs per package) is thought to be closer to 95% of all shipments. The Rotterdam Rules provide even higher limitation amounts (3 SDRs per kilogram and 875 SDRs per package). Thus all but the most valuable shipments will be entitled to full recovery under the new convention. To argue that even the most valuable shipments should also be entitled to full recovery is to implicitly reject the*

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concept of limited liability. If there is limitation of liability, the Rotterdam Rules provide limitation amounts that are adequate for their purpose.

b) Inflation: Paragraph 14 of the MD also complains that the SDR is subject to inflation, but that complaint is meaningless. Every monetary unit is subject to inflation (or deflation, if the world's economies move in that direction). The SDR minimizes the risks of inflation (or deflation) in any single currency because its value is based on a weighted average of the world's most important currencies in international trade. In any event, inflation does not appear to be a significant concern in today's world and it has not been a significant concern in this specific context for the last half-century. As a result of the container revolution, the average value of a package of goods carried by sea has actually decreased over the last fifty years. This is due in part to the lower shipping costs associated with the increased efficiency of the system, which has made it profitable to ship less valuable goods. It is also due in part to the fact that containerized goods are shipped in much smaller packages today than they were fifty years ago.

c) Sufficiency of the limitation on liability for delay: *The carrier's liability for delay is less often at issue. When speed is a factor, most shippers arrange for carriage by air or land. For carriage by sea, shippers sacrifice speed to obtain lower freight costs. When delivery time is essential, shippers generally make separate arrangements with carriers (including liability limits that meet the shippers' needs). In most cases, the Rotterdam Rules' limit on delay damages is two and one-half times the limit under the Hamburg Rules (which declare that liability for delay will "not exceed[]" the total freight payable under the contract of carriage," article 6(1)(b)).*

d) Compensation in cases of declared value: *The Rotterdam Rules' treatment of the compensation due when the value of the goods has been declared is exactly the same as in prior conventions. It has always been well understood that the declared value becomes the new limit on the carrier's liability. But the point is insignificant in practice because virtually every shipper prefers not to declare the value of the goods.*

e) Limitation on shipper's liability: *Finally, paragraph 14 complains that the shipper does not benefit from a limitation of liability. UNCITRAL spent many hours trying to formulate a limitation for the shipper's liability, but no one could devise a solution that was even arguably workable. In fact, no modern convention for the carriage of goods by any means of transport contains a limitation on the shipper's liability. The Montevideo Declaration similarly fails to propose a workable solution.*

15. The limitation of carriers' liability is prejudicial for transport users as it entails a transfer of costs in favour of ship-owners and affects the balance of payments of countries that are reliant on shipping services. It must be pointed out that limitation of liability is not admissible in the laws of many countries in this region of the world (for example, Brazil and Uruguay) and that the limits adopted by Argentina and other countries that have ratified the Hague Rules are significantly higher.

Paragraph 15 of the Montevideo Declaration rejects any limitation of the carrier's liability. That criticism misunderstands the nature of limitation and its relationship to freight rates. Before carriers pay compensation for damages they first collect the money in freight that covers all of their costs (including liability costs). If carriers were liable to pay more compensation for loss, damage, or delay, then freight rates would increase.

Without limitation of liability, every shipper would pay more in freight to cover the cost of the increased compensation for high-value cargo (which is the only cargo affected by limitation). Thus shippers of ordinary cargo would subsidize the carriage of high-value cargo. With limitation of liability, those few shippers who ship cargo that is more valuable than the limitation levels can decide for themselves whether to declare the full value (effectively buying extra insurance from the carrier) or buy insurance elsewhere, knowing that the carrier will not be liable above the limitation levels.

The logic of limited liability is so strong that every international transport law convention, regardless of the mode of transportation, has always provided for limited liability for the carrier. Eliminating limitation of liability would burden the entire system for the benefit of a few high-value shippers that can easily protect themselves through insurance.

16. With a view to achieving unanimity juridical principles and provisions have been incorporated into these new Rules both from those adopted by the Hague Rules of 1924 and from the Hamburg Rules.

To put it another way, a framework based on Common Law has been covered over with extracts from the Hamburg Rules which are founded on European codified civil law.

When it is said that the aim is to achieve uniformity in applicable law in order to facilitate international maritime trade, this ignores the incoherence of the mass of Rotterdam provisions designed to please everybody which, in fact, only leads to a legal Tower of Babel. This outcome is considerably more inappropriate than analysing the laws of other countries that have been built up to protect the rights of users, i.e. importers and exporters.

Modern information technology allows the world to have access to local laws and regulations along with the courts' and legal authorities' interpretations thereof. In other words it is not so difficult to find out about transoceanic rules and regulations.

a) *The first two sentences of this final paragraph, in which reference is made to the Hague-Visby Rules and the Hamburg Rules, seem to criticize the fact that the Rotterdam Rules incorporate, not without changes and adaptations to the present time, certain provisions of the Hague-Visby Rules and of the Hamburg Rules. The complaint seems to be that the Rotterdam Rules have adopted a common law "skeleton" and placed on it a vest (ropaje) of civil law. It is difficult to ascertain what is meant, but it appears that the Rotterdam Rules have not been read very carefully, nor has note been taken of the Convention's very significant changes as compared with the Hague-Visby Rules (e.g. abolition of the exonerations for fault in navigation and management of the ship, qualification of the excepted perils as reversals of the burden of proof), and the regulation ex novo of important areas of transport law, such as the electronic equivalents of transport documents, identity of the carrier, right of control and delivery.*

b) *The rest of the paragraph contains two equally surprising assertions. The first is that the Rotterdam Rules are an incoherent cumulus of articles and a real jurisprudential Tower of Babel: this is rather novel language for jurists, and it might be best not to comment. The second is that nowadays uniformity of law is not necessary any more since modern computer technology puts at the disposal of the whole universe local laws along with doctrinal and judicial interpretations. Therefore, the MD's conclusion seems to be that the continuous efforts that are being made inter alia by the UN Organizations and by the European Union with a view to eliminating the barriers to international trade caused by a lack of uniformity in national laws and regulations are a waste of time.*

To sum up, it is a mistake to proclaim that the Rotterdam Rules will put an end to the "worldwide confusion currently affecting this sector" as the promoters of the new regulations enthusiastically assert.

Conclusion: For all the above reasons we call on the governments and parliaments of our respective countries NOT to ratify or become party to the "Rotterdam Rules".

Montevideo, 22nd of October 2010.

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The view expressed in the closing paragraphs of the MD is clearly not shared by the many States and industry groups that participated in the drafting of the Rotterdam Rules, nor by the UN General Assembly that called upon Member States to consider becoming party to the Convention, nor by the European Parliament, which echoed that call.

The authors of this point-by-point refutation of the MD have responded to each of the issues raised in the MD in order to ensure that States are in a position to make an informed decision about whether or not to adopt the Rotterdam Rules. It is hoped that this decision is made only after a rigorous and honest examination and consideration of all facets of the new regime.

MANUEL ALBA, Madrid, Spain

FRANCESCO BERLINGIERI, Genoa, Italy

PHILIPPE DELEBECQUE, Paris, France

TOMOTAKA FUJITA, Tokyo, Japan

HANNU HONKA, Turku, Finland

RAFAEL ILLESCAS, Madrid, Spain

ANDERS MOELLMANN, Copenhagen, Denmark

MICHAEL STURLEY, Austin, Texas, USA

ALEXANDER VON ZIEGLER, Zurich, Switzerland

THE PROPOSED ROTTERDAM RULES AND THE OBJECTIONS CONTAINED IN THE "DECLARATION OF MONTEVIDEO"

ANTONIO ZUIDWIJK*

Recently an important group of South American experts from the private sector signed the Declaration of Montevideo and **recommend the governments of our countries NOT TO ADOPT the Rotterdam Rules.**

The most important rejection is contained in point 15, which reads as follows: (free translation of a lay-man)

15. The limitation of liability of carriers is harmful to transport users, involves a transfer of costs for the benefit of maritime carriers and affects the balance of payments of countries using maritime transport-services. We note that in the legislation of many countries in this region it is not allowed to limit responsibility (such as Brazil and Uruguay), and that the limits adopted by Argentina and other countries that have ratified the Hague Rules, are substantially higher.

If this in fact the main reason to make such a very serious recommendation, I believe that **prompt action should be taken to provoke a very ample debate.** Such a debate might prove that the recommendations of the **Montevideo Declaration** are based on wrong assumptions and if in fact this would be the outcome of the open debate, new recommendations could be made and serious damage to our Foreign Trade could so be avoided. And this debate should not be restricted to lawyers alone, as is done so far, but people from all sectors that have an interest in Foreign Commerce should take their time and give their input. I myself am a layman, but with 50 years experience in the port- and maritime sector in the region. Since 1970, when the "container" was practically unknown here, I became involved in questions surrounding its use and have read many papers which usually are only read by lawyers. I have tried to pass this experience on to as many people as possible and in the website you can find the full text of a book I wrote in Spanish (Contenedores, Buques y Puertos, partes de un Sistema de

* Argentina. www.antonioz.com.ar

Transporte)-(Containers, Ships and Ports, parts of a Transport-system). Therefore I invite you to read my humble opinion of what should be debated:

WHY IS IT SO IMPORTANT TO CREATE A LEGAL SYSTEM FOR MULTIMODAL TRANSPORT?

No one can dispute that a good legal system for Multimodal Transport can provide great benefits to Foreign Commerce of all countries. Since the seventies, thousands of meetings and discussions on the national, regional and global level have taken place, probably the most important one was in Geneva, where a committee of the United Nations (UNCTAD) worked from 1972 to 1980 to finally approve a Multimodal Transport Convention. The same day of its adoption, 8 countries warned that the selected modified Uniform System, instead of a Network-system, would be impractical, which finally proved to be correct. In Argentina the Chamber of Deputies is trying to make an adaptation of the Multimodal Transport Act 21429 of 1992, which after 18 years could not be enforced. At the international level there are discussions whether or not to ratify the Rotterdam Rules, a convention adopted by the General Assembly of the United Nations in December 2008, which was opened for ratification by member countries in September last year. This is mainly a maritime convention, but would apply to multimodal transport if there is a “leg” using sea-transport, which would cover 80% of all international multimodal transport. In both cases (the Argentine and international), there are still many obstacles and unfortunately there are reasons to doubt that we can expect good results in the short term. Many people all over the world, **who are convinced that good general rules for multimodal transport will benefit all**, ask the following question: **What can be the reason that for more than 30 years globally applicable rules are discussed, and yet only progress has been made for its application in the industrialized countries?** Studies have clearly demonstrated the great benefits to those countries, which have definitely lowered their transport- and transaction costs. This situation is unsatisfactory for everyone, because the absence of progress in emerging countries restrict these benefits to trade between the “industrialized “ countries, which is only a part of world trade. The next question is: **Why was there so little progress in “emerging” countries?** To address this issue in detail, you can write entire books, but let’s see if we can give in this paper an explanation of one of the main issues, **the one on which the Montevideo Declaration is based: the issue of limitation of liability of the carrier**. Studies in the United States and the European Union indicate, that the blame why so little progress has been made, must be sought in the global lack of knowledge (both in developed and developing countries) **to distinguish a Multimodal Transport from an Intermodal Transport**.

Let’s start with the first explanation: The term Intermodal Transport

R.R. and objections contained in the "Declaration of Montevideo", by Antonio Zuidwijk

(I.T.) was invented in the United States, when the widespread use of containers started and an efficient integration of a transport chain with the use of different modes, became possible and the so called "seamless transportation chains" were created.

I.T. primarily has to do with the operation.

The term Multimodal Transport (M.T) came into use in 1972 in Geneva at UNCTAD meetings. **M.T. has to do with the operator engaging the multimodal transport (M.T.O), his responsibilities and with the transport document that is used (M.T.D.).** We all know how the massive use of containers totally changed the face of transport operations throughout the world since the 80's. This development began in the industrialized countries and gradually extended to developing countries, which could not do so quickly because of the huge investments they had to make to change their infrastructures. But little by little they managed to adapt to the new demands and now the container is present in all corners of the world. With the widespread use of containers, Intermodal Transportation was created worldwide and transportation costs and logistics costs began to decline. Finally this decline in transport-costs became so substantial that it was cheaper to move the factories of Europe and America to Asia with cheaper labor costs. This was the begin of the famous globalization and now it is common in the assembly of a car that parts are used from several countries. Because of its proven cost reduction, intermodal transport is now applied (to a greater or lesser degree) throughout the whole world and **all countries**, both the "developed" as well as the "emerging" countries have benefited from reduced transport costs. For all of them the "economic distance" separating the production areas from consumption areas, has narrowed. However there is a big difference between achievements in the two groups: In the "developed" countries it was constantly studied how they could lower the total costs of transport, not only the direct costs, but also those related with commercial transactions and logistics costs. On the other hand in emerging countries "dogmatic approaches" prevailed: most did not want to discuss certain legal aspects. The advancement of Intermodal Transportation lowered costs, but at the same brought changes in the way contracts are made from origin to destination, and these changes led to difficulties in the application of rules of liability of the carrier in the different transport modes that are successively used (usually each mode has its own rules, according to historical trends).

The industrialized countries realized that **changes in transportation contracts required adjustments to their laws** and started making fargoing studies. In general we can say that emerging countries did not follow these examples and for example in Argentina transport still is governed mainly by the Commercial Code of the end of the 19th century and still speaks of horses

and carts. Europe, where most countries also had laws of the 19th century, started to develop in 1956 Regional Conventions for different modes of transport, which also were joined by several countries outside Europe. (CMR, CIM-COTIF and CMNI). Finally several European countries changed their laws and outmoded business models and adapted new laws based on those modern conventions. One of the best examples is the Trade Act of Germany based on the CMR Convention. I think our legislators should discuss such examples in detail: The industrialized countries have tried to adapt their legal systems so as to **take utmost advantage** of the new operating systems and studied how to reduce not only the direct operational costs, but also those related to commercial transactions and especially the rules that have to do with loss and damage and the administrative costs related therewith, the so called **friction-costs**.

Several countries have shown with proven figures that they have been successful with their legal adaptations to the new transport systems, especially in the U.S.. (See www.antonioz.com.ar Multimodal Transport). Meanwhile in many emerging countries certain legal issues are addressed as **a dogma in a religion, something about which one cannot argue**. One of the best examples is the difficulty to agree on the rules that have to do with the liability of carriers and compensation in cases of damage to the goods. There are several international studies that identified the problems and here we can name three:

- 1) 1998 Ministry of Transport of the U.S.A. (DOT study of Cargo liability regimes).
- 2) 2001 Study of the European Union (The Economic Impact of carrier liability on intermodal freight transport)
- 3) 2001 Study of the OECD (Cargo Liability Regimes / carrier liability regimes). In these 3 studies various effects have been examined of costs of insurance on the final costs of trade and transport. (friction costs). Shippers usually take insurance on their goods and carriers do so to cover their risk against claims, when damages occur.

What rules apply in Argentina? To Road transport mainly the Commercial Code (1889 repeat 1889), which has no limit of liability of the carrier (with few exceptions). But also another law applies: The Motor Transport Act 24,653 of 1996. This law requires the cargo owner to take out insurance on his cargo, with a clause that the insurance company cannot take recourse against the carrier.

Transport by train is also mainly regulated by the Commercial Code and by the Law of Railways. In the port also the Commercial Code applies, except in special cases when a special clause in the bill of lading (the Himalaya-clause) can be used by the terminal operator. Water transport is ruled by the Navigation Act. Then there is also a multimodal transport law 24921, which

so far cannot be applied in practice. But throughout the chain the Civil Code is applicable. The result is that in the case of inland transport and terminal operations in Argentina, claims can be for the value of the damaged goods plus profits and sometimes several other items: **the final value of a claim is unpredictable.** This causes some problems for carriers when taking liability insurance. They probably find the same complication in many other "developing" countries. In the 3 studies we mentioned above you can read that there is a lack of understanding how the limitation of carrier's liability works out in the total costs. In all three it was concluded that the final costs are lower if the carrier has the possibility to limit his liability, unless the shipper declares the value of their merchandise and eventually agrees to pay a higher freight. This was already ascertained in the United States in 1935, when an amendment was made to the Carmack Act, which originally did not allow the limitation of liability for land transport. The "Amendment" established that if the carrier offered a discount on its published rate ("released rate") he could agree with the owner of the cargo to limit the carrier's liability. This same concept applies in modern European and Regional Conventions. The C.M.R. Convention is high-lighted in the 3 studies as a good example for road transport. As already mentioned, in 1998 Germany built it in their national commercial laws and it is considered that the CMR is the most successful case of legal unification of liability regimes in history. (See DOT study page 45 and Uniform Law Review, 1996, page 429). In these studies we can read that **the system of limiting the liability of the carrier in C.M.R., counts with the satisfaction of both parties: shippers and carriers.** In this regard we read verbatim in D.O.T. page 25: **It is not fair to charge shippers of common cargoes with costs of damages or other losses of cargoes that have a value that is higher than usual.** And in D.O.T. page 30: **An efficient legal system is one in which the cost of loss and damage, and transportation costs will be as low as possible.**

Emerging countries also must find a legal system that offers the lowest overall cost to all involved. The important thing is to fix the value of the limitation of the liability of the carrier, in such a way that it covers a very large percentage of the value of the cargoes that normally are transported and use a **monetary unit that over a considerable period can offset the devaluation: the Special Drawing Right** which is used in regional agreements in Europe. People should observe the figures of the European study 2001 which can be found in the box at the end of this note: The limitation of liability of C.M.R. is 8.33 S.D.R. per kilo of the damaged goods, which covers a very wide range of cargoes transported in Europe and is higher than average values for most emerging countries. Those that offer higher valued cargoes, may agree on higher carrier's liability limit, reporting the value of the merchandise and eventually pay a higher freight. Many people ignore these facts, as was found in a Virtual Forum of Aladi of 2007 about the rules for Multimodal Transport in the region.

Rotterdam Rules

Several rejected the idea of limiting liability, which they considered (as said above) like **a dogma** in a religion! **Something that cannot be considered!** But almost none had any idea of the relationship of the various conventions that set limits, between the average value of the cargoes carried by each mode and the value of the limitation. Neither did they know the fact that there is always a possibility of agreeing a higher limit. I think the 3 studies mentioned above, should be part of the discussions on the ratification of the Rules of Rotterdam, which the “Group of Montevideo” reject mainly on the issue of limitation of liability of the carrier. The Navigation Act of the U.S. (COGSA) has a limitation of liability of only \$ 500, - per package, however the U.S. has proven to be the country which has studied the issue very seriously. Since 1965 the USA has regularly enacted new laws to adapt them to the requirements of modern transport and trade. Major studies (of ENO TRANSPORTATION FOUNDATION) have shown with figures how the benefits have been to U.S.economy.

I hope many people will realize that they should voice their opinions and that everybody should become aware of the importance of internationally accepted rules. As a layman, I repeat a layman, I am convinced that it is better to start with a convention which is not clear enough for many, but if after an ample debate it is considered to be clear enough to give it a start then let us do so. Then certainly in 4 or 5 years enough jurisprudence be formed.

The other option seems to be, that we start all over again and discuss another 30 years to try to put a perfect Convention together, which will probably prove to be an impossible task.

Valores medidos por Kilo de carga

Modo	Valor en Euros	Regimen Responsabilidad	Limite SDR/DEG	Valor Limite En Euros (*)
Tr. aereo 17.00 23	E\$ 44.65	Warsaw Conv	17.00	23.12
Tr. carretero	E\$ 1.62	CMR	8.33	11.40
Tr. ferroviario	E\$ 0.93	CIM	16.33	22.20
Tr. nav. interior	E\$ 0.90	CMNI	2.00	2.72
Nav. mar. cabotaje	E\$ 0.88	H.V (B/L)	Ver abajo	2.72

(*) Valor de la limitacion de responsabilidad por kilo en Euros

H.V = Hague Visby Limitacion de responsabilidad SDR 667 por bulto o 2.00 por kilo, lo que resulte mayor

H.V. Hague Visby is SDR 667 per package or 2 SDR per kilo, whichever is highest.

Notes: Average values of cargo per kilo and values of limitation. E\$ stands for Euros. As shown, only the limitation on air transport is much lower than the average value of the cargo, but receives few objections.

Value of C.M.N.I. is for the general cargo. Bulk-values (mainly coal and minerals, reportedly are only Euros 0.10 per kilo)

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A BRIEF INTRODUCTION TO THE TOPIC ON RECOGNITION OF FOREIGN JUDICIAL SALES OF SHIPS

HENRY HAI LI*

It is believed that the topic covering the issues in respect of judicial sales of ships is a rather comprehensive one, and recognition of foreign judicial sales of ships is one of the most important aspects of this topic. In reality, a number of problems in relation to recognition of foreign judicial sales of ships are encountered by the international shipping industry from time to time. It is hoped that solutions to these problems may be found and adopted with CMI's efforts.

The Project

At a meeting of the Executive Council of the CMI in 2007, it was proposed that a preliminary study on the issues in relation to judicial sales of ships might be worthy to be conducted for the purpose of exploring future possible topics/projects for the CMI. It was later agreed to include this topic into the program of the CMI Athens Conference in 2008 as one of the issues to be discussed at the Conference.

At the CMI Athens Conference in 2008, a paper entitled "A Brief Discussion on Judicial Sales of Ships", focusing on international recognition on foreign judicial sales of ships, was presented, which was followed by another presentation highlighting some tentative issues in relation to sales of ships and the tentative answers from the Belgian perspective. After the presentations, a number of people showed their interests in this topic and volunteered to participate in the future work on this topic.

With the approval by the CMI Executive Council, an international working group on judicial sales of ships (the "IWG") was formally established after the Athens Conference. Now, the IWG consists of the following members,

¹ Chairman of the CMI International Working Group on Judicial Sales of Ships.

A brief Introduction to the topic of foreign judicial sales of ships, by Henry Hai Li

Henry Hai Li	Chairman	China
Jonathan Lux	Rapporteur	UK
Andrew Robinson	member	South Africa
Benoit Goemans	member	Belgium
Frank Smeele	member	Netherlands
Louis Mbanefo	member	Nigeria
Aurelio Fernandez	member	Venezuela
Klaus Ramming	member	Germany
Francis Nolan	member	USA

The Questionnaire and the Replies

After the establishment of the IWG, the members of the IWG spent quite some time in collecting, summarizing and analyzing information and materials concerning cases in a number of jurisdictions in relation to recognition on foreign judicial sales of ships. After discussions within the IWG, a draft questionnaire on judicial sales of ships was formulated and submitted on 5 May 2010 to the CMI Executive Council for comments and approval. The Executive Council proposed a number of changes or revisions on the contents of the draft questionnaire. Mr. Giorgio Berlingieri made a very lengthy and constructive proposal on the draft questionnaire. Mr. Andrew Taylor reworked on some of the text to make the questionnaire much clearer in the English language. The questions in the final questionnaire are divided into 5 groups. The headings of the 5 groups are respectively as follows: “The concept of judicial sales of ships”, “The key procedural elements of judicial sales of ships”, “The effects of judicial sales of ships”, “Recognition of legal effects of foreign judicial sales of ships”, and “The necessity and feasibility to have an international instrument on recognition of foreign judicial sales of ships”. A copy of the Questionnaire is attached hereto for easy reference.

The CMI Questionnaire was sent to the national maritime law associations on 17 May 2010 and replies to which were invited to be sent back to the CMI by the end of July 2010, so as to ensure that the IWG may have sufficient time to summarize and analyse the replies and to make necessary preparation for the discussion at this Colloquium. On 17 August 2010 a reminder for replies was sent to the national maritime law associations suggesting that replies should be sent to the CMI before the end of August 2010 so as to enable the IWG to take account of the reply in the preparation for the discussion at this Colloquium.

At the time of 19 September 2010, replies to the Questionnaire were received from 18 national maritime law associations, including Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, France, Germany, Italy, Malta, Nigeria, Norway, Singapore, South Africa, Sweden, USA, and

Venezuela. In addition, a reply to the Questionnaire was also received from a CMI Titulary member in Spain².

The Discussion at this Colloquium

It is planned that the discussion on this topic at this Colloquium will be co-chaired by Henry Hai Li and Jonathan Lux. And, there will be 5 members of the IWG to deliver a keynote speech on each of the 5 groups of the questions contained in the Questionnaire. Mr. Aurelio Fernández-Concheso will be speak on the first 1 group of questions; Mr. Benoit Goemans on the second group, Mr. Louis Mbanefo on the third group, Mr. Frank Smeele on the fourth group, and Mr. Andrew Robinson on the fifth group. It is hoped that after the keynote speeches, comments and proposals will be received from the attendants to this session. It is also hoped that the discussion at this colloquium may be helpful to the IWG in finalizing its report to the CMI Executive Council.

Comité Maritime International QUESTIONNAIRE

in respect of Recognition of Foreign Judicial Sales of Ships

After the CMI Athens Conference in 2008, the CMI Executive Council has set up an International Working Group (the “IWG”) to investigate problems in relation to the judicial sale of ships, in particular:

- (i) issues in respect of international recognition of foreign judicial sales of ships; and
- (ii) the necessity and feasibility of producing an international instrument on this subject.

This Questionnaire is intended to gather as much information as possible about the judicial sale of ships in your jurisdiction and your views on certain related issues. The questions contained in this Questionnaire are divided into 5 groups, each of which has a heading that indicates the core issue of the questions of this group. It would be greatly appreciated if the questions could be answered with not only a “yes” or “no”, but also with as many comments and/or explanations as possible. If more information about this subject is required, reference may be made to a paper which can be found at pages 342-356 of CMI Yearbook 2009 Athens II, or downloaded at the website, i.e. <http://www.cmi2008athens.gr/sub9.1.pdf>.

We would be most grateful if you could provide your responses to this Questionnaire as soon as possible, preferably before the end of July 2010, so

² This titulary member is Prof. José Maria Alcantara.

that the IWG has sufficient time to make necessary preparations for the discussion to be conducted at the forthcoming CMI colloquium at Buenos Aires in this October. If you have any queries regarding this Questionnaire, please feel free to contact the Chair of the IWG, Dr. & Prof. Henry Hai Li at henryhaili@yahoo.com.cn.

1. The concept of judicial sales of ships

Note: The IWG is aware that in many jurisdictions judicial sale is termed differently, such as forced sale or court sale, etc. and that judicial sales of ships may be initiated or conducted for various purposes, such as to enforce a maritime lien or mortgage on a ship, to enforce an effective judgment or arbitral award, or to preserve a maritime claim taking the ship as a wasting asset. It is hoped that your answers and comments to the questions within this group will help to produce a proper definition of judicial sales of ships for the purpose of this project and/or the future international instrument.

- 1.1 Is the term judicial sale or judicial sale of ship (or a similar term such as forced sale) defined in the law of your jurisdiction? If yes, please provide the definition. If not, please explain what kind of sale of ship equates to a judicial sale of ship by which all liens or charges or encumbrances attached to the ship before the sale will be extinguished?
- 1.2 For what purpose may a judicial sale of ship be initiated and conducted in your jurisdiction?
- 1.3 In what circumstances and on what conditions may a judicial sale of ship be initiated and conducted in your jurisdiction?
- 1.4 Will a judicial sale of ship in your jurisdiction necessarily be conducted by or under the control of a court?
- 1.5 Is auction the only method of judicial sale of ships in your jurisdiction? If not, please list and explain in detail all other ways, such as private treaty, which may be used for judicial sales of ships?

2. The key procedural elements of judicial sales of ships

Note: Based on the understanding that judicial sales of ships may occur in different kind of actions (such as an action *in rem*, an action *in personam*, an action for conservation or an action for enforcement) the procedures for judicial sales of ships may vary. It is hoped that the answers and comments to the questions in this group will help to establish the most common elements or the basic characteristics of the procedures for judicial sales of ships, and to determine the necessary procedural elements of a judicial sale of ship so that it will be internationally recognized.

- 2.1 Briefly and without going into detail, what is the general procedure or the key procedural elements of a judicial sale of ship in your jurisdiction?
- 2.2 Is it necessary to provide written notice to the register of ships in which a ship is entered before that ship is sold by way of judicial sale?
- 2.3 Is it necessary to provide written notice to the registered ship-owner

Recognition of foreign judicial sales of ships

before a ship is sold by way of judicial sale? And, is there any procedure by which the registered ship-owner may challenge the sale of the ship? If yes, please explain in detail.

- 2.4 Is it necessary to provide written notice to the registered mortgagees, the known holders of maritime liens and/or the known holders of other charges in respect of the ship before the ship is sold? And, is there any procedure by which the mortgagees and/or the aforesaid holders may get access to the distribution of the proceeds of the sale of the ship? If yes, please explain in detail.
- 2.5 Following the judicial sale of a ship, will a document such as an order or a certificate be issued to the purchaser by the court that conducted or controlled the judicial sale of ship, to the effect that the ship is sold free of all mortgages, liens, charges and encumbrances, or that the purchaser has acquired a clean title of the ship from the judicial sale?
- 2.6 Is there any difference in procedure if the ship to be sold by way of judicial sale is a foreign ship? If yes, please highlight the difference in detail.

3. The effects of judicial sales of ships

Note: It is observed that once a ship is sold by way of judicial sale, certain legal effects or consequences will follow. For example, in many jurisdictions, the ownership of the previous ship-owner will cease to exist and/or the mortgages, maritime liens and other charges attached to the ship prior to the sale will be extinguished. The questions in this group are intended to collect as much as possible information regarding your jurisdiction and to identify the most common legal effects or consequences which a judicial sale of ship may bring about. It might be worth mentioning that the questions in this group should be understood and answered without regard for any foreign elements.

- 3.1 What legal effects or consequences would a judicial sale of ship bring about?
- 3.2 Will a judicial sale of ship extinguish the previous ownership?
- 3.3 Will a judicial sale of ship extinguish all mortgages, liens, charges or encumbrances attached to the ship before the sale?
- 3.4 Will the purchaser acquire a clean title over the ship, good against the whole world, through the judicial sale of ship?
- 3.5 Will a judicial sale of ship automatically annul the previous registration of the ship (including the registration of the ship's nationality, ownership, mortgage, bareboat charter, etc.)?
- 3.6 On production of a document such as an order or a certificate issued by the court that conducted or controlled the judicial sale of the ship, will the register of ships delete the previous registration of or deregister the ship (including the registration of the ship's nationality, ownership, mortgage, bareboat charter, etc.)?
- 3.7 On production of a document such as an order or a certificate issued by the court that conducted or controlled the judicial sale of the ship, will

the register of ships register the ship in its registration or enrolment regardless of whether the previous registration of the ship is deleted or not?

4. Recognition of legal effects of foreign judicial sales of ships

Note: It is observed that ships may be sold by way of judicial sale in one jurisdiction, while recognition of such sale may be required in another jurisdiction. Non-recognition of foreign judicial sales of ships may result in a number of problems or conflicts of laws. In addition, it is observed that in many jurisdictions, no ready provisions of law are available as to when and/or on what conditions a foreign judicial sale of ship will be recognized as having the same legal effects as a domestically accomplished judicial sale of ship. In view of the above, it is hoped that the answers and/or comments to the questions in this group will help to gather as much information as possible about the real situation and the prevailing practices in your jurisdiction with respect to recognition of foreign judicial sales of ships.

- 4.1 Will a judicial sale of a ship accomplished in a foreign jurisdiction be recognized in your jurisdiction as having the same legal effects as the judicial sale of a ship accomplished in your jurisdiction? If yes, please list the circumstance and explain the conditions for such recognition.
- 4.2 Would a court in your country have jurisdiction over a case brought by the previous ship-owner and challenging the foreign judicial sale of a ship?
- 4.3 Would a court in your country have jurisdiction over a case brought by the holder of a maritime lien, mortgage or other charge attached to the ship prior to the foreign judicial sale of a ship and challenging the foreign judicial sale of a ship?
- 4.4. If the court in your country would have jurisdiction over the cases mentioned in Question 4.2 and/ or Question 4.3, which country's law would apply with regard to the substantive issues of the dispute?
- 4.5 If a ship which is entered in a register of ships in your jurisdiction is sold in a foreign jurisdiction by way of judicial sale, will the register of ships in your jurisdiction delete the registration of that ship upon notice of the foreign judicial sale or upon production by the purchaser of a document such as an order or a certificate issued by the foreign court that conducted and controlled the sale? If yes, please explain the circumstances and conditions in detail.
- 4.6 If a foreign ship were sold in a foreign jurisdiction by way of judicial sale, will a register of ships in your jurisdiction enter that ship in its registration regardless of whether the previous foreign registration has been deleted?

5. The necessity and feasibility to have an international instrument on recognition of foreign judicial sales of ships

Recognition of foreign judicial sales of ships

Note: The IWG is aware of a few cases regarding the recognition of foreign judicial sales of ships. It is believed that the reported cases represent just a small part of the whole picture. On the other hand, since the International Convention on Maritime Liens and Mortgages 1993 came into force on 5 September 2004, and provisions concerning notice and effects of forced sale are contained therein, it might be sensible to consider whether it is necessary and feasible to work out an international instrument, before further resources are put into this project. For this purpose, the questions in this group are designed to gather as much information as possible on the whole picture and to identify as many real problems that have been encountered by the international shipping industry as possible.

- 5.1 Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale and that sale has been challenged by the previous ship-owner or another interested person in a foreign jurisdiction? If yes, please list the cases and highlight the issues involved in detail.
- 5.2 Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale in a foreign jurisdiction and that sale has been challenged by the previous ship-owner or another interested person in your jurisdiction? If yes, please list the cases and highlight the issues involved in detail.
- 5.3 Article 11 of the International Convention on Maritime Liens and Mortgages 1993 provides that notice of a forced sale must be given to various parties. Do you think that those provisions are appropriate and should they be accepted as the basic requirements for recognition of a foreign judicial sale of ship?
- 5.4 Article 12.1 of the International Convention on Maritime Liens and Mortgages 1993 sets down two conditions that must be satisfied so that the registered mortgages or charges, liens and other encumbrances attached to a ship shall be extinguished after its forced sale. Do you think that those provisions are appropriate and should also be followed in recognition of a foreign judicial sale of ship?
- 5.5 Article 12.5 of the International Convention on Maritime Liens and Mortgages 1993 regulates the issuance of a certificate by the court that conducted the sale and the deregistration and registration of the ship that has been sold. Do you think that those provisions are appropriate and should they be made of general application in recognition of a foreign judicial sale of ship?
- 5.6 Bearing in mind that the International Convention on Maritime Liens and Mortgages 1993 has come into force and that provisions concerning notice and the effects of forced sale are contained therein, is it still necessary and feasible to have a separate international instrument, such as a convention, to deal with issues regarding the recognition of foreign judicial sales of ships?

PRESENTATION ON THE FIRST SET OF QUESTIONS

AURELIO FERNÁNDEZ-CONCHESO¹

1. Introduction

Mr. Henry Li, Chairman of the International Working Group on the Judicial Sale of Ships has been so kind so as to entrust me with addressing the honourable participants of the CMI Colloquium in this beautiful city of Buenos Aires, on the first set of questions of the CMI questionnaire which was distributed amongst the Associations of Maritime Law of the different countries o the subject.

The CMI decided to put together an International Working Group on the Judicial Sale of Ships given the importance of the subject, and especially that while the arrest of vessels is mentioned, governed or regulated in a number of international conventions it was felt that the issue judicial sale is much less clearly regulated.

2. Questions

The purpose of the Working Group was to examine the issues related to judicial sales of ships and specifically the question of the recognition of the foreign judicial sale and whether it is appropriate to materialize some sort of international instrument on the subject under the impulse of the CMI to set a frame for the work of the International Working Group a questionnaire was made and circulated to the Member Associations in the month of May 2010, the purpose of the same being for the International Working Group to gather as much information as possible on the subject. The questionnaire was

¹ Admitted to practice Venezuela 1982. Master of Laws in Admiralty 1983. Vice President of the Venezuelan Maritime Association. Ex Secretary General to the Ibero-American Law Institute. Titulary Member CMI. Member of the International Firm Clyde & Co in Caracas, Venezuela. Professor of Maritime Law at the Maritime University of the Caribbean. Author of the books Navigation Administrative Regime, Law on Aquatic Spaces and the Venezuelan Maritime Procedure Professor.

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divided in five different questions which will be addressed by my honourable colleagues of the IWG.

The first of these questions as a group relate mainly to the concept of judicial sale; that is to say whether the legislation of each of the different countries to which the questionnaire was circulated contain a definition of the term.

The question of definitions in law, that is to say, the technique whereby a legal instrument defines a specific institution, action or concept has in itself been a matter of discussion in the legal science. For some, it is a helpful tool to ensure that society to which laws are directed understands the actual scope and effective reach of the matter being defined. To others, however, and I must say that at heart in my country it is the more modern view, it puts a limit to the reach and effect of the area a legal instrument purports to regulate, generating the risk that situations which the legislative intent sought to govern remain excluded to the extent that they do not fit with sufficient accuracy within the definition. So many scholars are for a more permissive approach and to leave definitions to Court decisions and authors. Personally, I am, and have always been, of the belief that whereas the legal instruments cannot become a mere catalogue of definitions, the key issues, elements or factors that the legal instrument addresses are better served and a more precise application of the legal instrument is achieved through definitions.

Generally, the International Conventions on Maritime Law do not define the term *judicial sale*. The Convention on Maritime Liens and Claims of 1967 and the International Convention of Maritime Liens and Mortgages of 1993 use the term for sale but as explained by Henry Li in his paper presented in the CMI meeting in Athens on judicial sale of ships, the term *forced sale* is clearly one that cannot be considered an exact equivalent to the term *judicial sale* insofar as there may be situations in which a forced sale is not a judicial sale as such but a sale imposed on the owner of the ship by circumstances of financial hardship or necessity or in procedures unrelated to judicial activity such as the case of a sale imposed by a governmental authority of a non-judicial nature.

The group of questions on the CMI questionnaire related to the term judicial sale included (a) firstly the concept of judicial sale and whether there is a definition in the different legislations of the countries to which the questionnaire was circulated; (b) secondly for what purpose may a judicial sale be initiated or conducted; (c) a third question was in what circumstances that sale could be initiated or conducted; (d) fourthly, whether a judicial sale is necessarily conducted by or under the control of the Court and (e) finally, whether the judicial sale can only take place via the method of an auction or if there are others as well.

3. Answers in General

Answers were received by Argentina, Belgium, Brazil, Canada, China, Croatia, Denmark, Dominican Republic, France, Germany, Italy, Malta, Nigeria, Norway, Singapore, South Africa, Spain, Sweden, United States, Venezuela, meaning countries representing Europe, Asia Africa and the Americas, so the answers to this questionnaire reflect a wide range of legal systems, of different backgrounds which can also be categorized as members of two styles of legal systems, to be sure the *common law* on the one hand and the *continental law* or *written system* on the other. It is remarkable that notwithstanding the different continents from which answers were received and at the same time the different legal systems that govern each of these countries, the substance and bottom line of the answers were in each case very similar. To me, this relates to an effect for which the CMI has to be given credit, namely, the internationalization and unification of the maritime law of today in different countries of the world that was achieved through the last century.

All of the answers received coincided in that the internal legislations do not define the notion of *judicial sale* through an express concept. It was therefore a clear common ground that in the legislation of the different countries the term of judicial sale is not expressly defined by a definition of law. Some countries, like Italy, provide for a notion of *forced sale* and include the term within that notion.

At the same time however while in none of the countries that replied the term of *judicial sale* is defined in all of them the judicial sale of a vessel, that is to say, a sale conducted in strict relationship with the judicial procedure, is governed by special provisions either of maritime law or within the context of civil procedure rules of a general nature or in respect to any other assets in a way in which while not expressly defined there are two or three sets of elements that can be identified as the common thread of the same. In some countries, like the United States there are different types of judicial sales, some by the State Court, some by Federal Courts; but at the end there is a unifying element which is the fact that the sale conducted with a direct relationship with a Court and in a Court-related procedure.

So this lack of an express definition in the different legislations of the countries that replied, is in no way a reason to think that the matter is not governed in an advanced way in each. Much to the contrary, in all of them, the judicial sale of a ship -understood as the sale of the same in relation to judicial procedures as provided by the legislation- is governed and regulated in sufficient detail. Nevertheless, the very existential purpose of the CMI is in unification of rules with the ultimate goal of unifying maritime law globally.

The lack of a notion or express definition would appear to lead to that if the conclusion of the efforts of the International Working Group is the need

for an instrument on the subject, an express definition of the judicial sale gathering the common elements of what the legal profession understands as judicial sale would be convenient.

To me, from the different answers the main element is that a judicial sale of ships is a type of forced sale in which a Court, whether maritime or not, whether specialized or not, whether state or federal, conducts a procedure that ends up with a sale of the vessel under strict supervision and coordination.

4. Remaining Contents of First Question

The second and third sub-questions, in question one are closely related. They refer to what purpose and under what circumstances and conditions could a judicial sale be initiated or conducted.

As with the general orientation and the basic direction of the answer in respect to whether the term judicial sale was defined or not, the answers for the different jurisdictions were very similar. Some national legislations provide for quasi-immunity in the sense that they determine that the arrest of the vessel can only take place when there is a maritime lien or credit of some nature, a mortgage or hypothec.

In most jurisdictions the sale relates to the enforcement of a judgment or arbitral award or for security in respect thereof. Also in most countries the purpose of the judicial sale may be the enforcement a maritime lien or mortgage providing basis for the arrest of the vessel or (importantly when there are no actions *in rem* as it is the case in Argentina) in an *in personam* action against the owner of the vessel. Furthermore, in most jurisdictions, it is also possible to conduct a judicial for the satisfaction of a creditor's claim insofar as that creditor holds some sort of an executive title which in some cases includes a variety of documents such as for example in Denmark where it includes debt instruments, pledges, bills of exchange, notarized documents etc...

So, generally it can be said to be common ground that while some jurisdictions allow to sell the vessel as a result and consequence of Court procedures for the satisfaction of a special type of secured credit, i.e. a lien or mortgage, in others the sale of a vessel as a result of judicial procedures is also possible for other creditor's rights insofar as those creditor's rights are either contained in an executive title such as for example a notarized document of debt, a promissory note or draft, or some other title or credit that has been shown through the evidence presented in Court as sufficient for the creditor to be considered to have a right to satisfy his debt with the sale of assets from the defendant.

In a number of jurisdictions, for example, France, the Dominican Republic and Venezuela, to mention just three, a judicial sale is only possible when the procedures in respect of the lien, mortgage or such other type of

credit have concluded with judgment or an award. But in others cases, say for example Nigeria, Singapore the United States and Canada the judicial sale is possible *pendent litis* that is to say in the context of the i.e. at the start of procedures or irrespective of whether a judgment has been reached, when there is a clear right, to prevent deterioration, increased costs or in a combination of factors. That is also the case when there is a mortgage and the mortgage agreement provides for a direct repossession pre-judgment sale.

5. Last Group

The last of the first set of questions relate to whether a judicial sale must always be conducted under supervision of a court and if an auction is the only method of judicial sale.

The majority of the answers went in the direction that a judicial sale is always under the supervision of a Court although in some countries such as the US, Canada, the Dominican Republic, Norway or Nigeria, a Court Marshall, Sheriff, Assistant or Private Vendeur has a predominant role.

On the other hand, the auction is the widespread and common method. In some countries like mine, Venezuela, it is the exclusive one for a judicial sale. But a majority of countries allow variations thereof on the sales that are technically private in nature insofar as either directed by a broker or carried out by private parties or by private treaty amongst them but always as a matter of principle as well within the supervision of the Court.

6. Conclusions

By way of conclusion therefore, the notion of a judicial sale, the reasons for the same, the circumstances in which it must be effected and the methods through which it is concluded are:

1. Governed in most legislations in either the maritime or procedural legislation.
2. Governed in a way in which there is a set of rules in respect of the judicial sale but not express definition thereof.
3. Possible for the purposes of enforcing a judgment, award, settlement or title related to a maritime lien, mortgage or hypothec, *in personam* actions or indeed other types of credit.
4. Usually effected directly by the Court or where not directly by the Court by direct supervision of the same or one of its officers, such as a Marshall.
5. Normally effected through an auction but also through related methods such as a private sale or through a broker but in terms and conditions that must be appropriately approved by the judicial entity under whose authority it has been imposed.

REPORT ON THE KEY PROCEDURAL ELEMENTS OF JUDICIAL SALES OF SHIPS (SECOND SET OF QUESTIONS)

BENOIT GOEMANS¹

Rules of procedures are always the fruit of a difficult search for an equilibrium between on the one hand keeping the consumption of time and money as low as possible and on the other hand protecting the rights of whoever may be affected by the procedure.

The rule maker will always have to make a compromise. In abstract terms it is probably not possible to provide absolute protection of the defendant and others affected by plaintiff's action within a fast and cost effective proceeding.

How far should one go in ascertaining that the shipowner was properly and timely advised of the ongoing proceeding? Is a notice to the master sufficient, whether or not hired by the shipowner, to the agent? Who is deemed to be the agent? What if he is no longer the agent? Should the creditors be advised, if so, which creditors, what is a "known" and what is an "unknown" creditor? You will not receive answers to those questions hereunder, but these questions are a necessary background for the reflection regarding the recognition.

More than for the judicial sale of any other asset, the reliability of the procedure is especially challenged when the forced sale concerns a ship, who, by her nature, is exposed to the law of as many countries as she transgresses national frontiers. Therefore, when finding out whether or not a judicial sale will be recognized, the preliminary question is really how the procedure was conducted. The question of recognition is in fact asking how resistant the

¹ Founding partner of Goemans, De Scheemaecker Advocaten, Belgium, with an international commercial law practice, primarily shipping, including security instruments and judicial sale of ships at the request of mortgagees; Candidate in Law, K.U. Leuven, 1984, Licentiate in Law, K.U. Leuven, 1987; LL. M. in Admiralty, Tulane, 1989; Diploma Maritime Law and Law of Inland Waterways, University of Antwerp, 1990; called at the Bar in 1987; Professor of Maritime law U.C. Louvain, 1994-2006, Professor of Marine Insurance, University of Hasselt, 1997-2007, Member of the Board of Directors and of the Board of Editors of the Jurisprudence du Port d'Anvers, Member of the Board of Editors of the Journal of European Contract Law; publication in shipping law, among others on Judicial Sale of Ships and Liens and Mortgages, Member of the Royal Commission on the reform of the Belgian maritime law, lectures and reports at Antwerp, Athens, Bordeaux, Brussels, Buenos Aires (2000), Liège, London, Malmö.

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procedure in one country will be to the law and practice in another country. And the answer is probably that the rule maker should be especially vigilant, and it may be necessary to set a higher standard of protection of the defendant's rights, in order to resist to challenges which may be brought under the laws of other countries Report at Buenos Aires on 25th October 2010 on the Key Procedural Elements of Judicial Sales of Ships.

Question 2.1:

Briefly and without going into detail, what is the general procedure or the key procedural elements of a judicial sale of ship in your jurisdiction?

This question seeks a general overview of the proceeding. While for the next questions within this second set, we will be able to present a summary, a synoptic presentation of the answers of this first question would be doomed to inaccuracy.

This general question is necessary for the understanding of each system, but the summary of the replies to the next questions serves the purpose of this reporting.

Question 2.2:

Is it necessary to provide written notice to the register of ships in which a ship is entered before that ship is sold by way of judicial sale?

Summary of the replies:

Argentina	Yes, and if registered in foreign register to the consul of that country
Australia	No
Belgium	Only to the Belgian register, regardless the nationality of the ship
Canada	No, unless so ordered by Federal Court
China	Yes
Croatia	Yes
Denmark	Yes, and if Ship not registered in Denmark then publication in accordance with rules of the country of registration
Dominican Republic	No
France	No
Germany	[in register of which country?]
Italy	(No), but attachment should be endorsed on ship register, and if ship registered abroad, then also to Consul of the country of registration
Japan	Yes, if registered with Japanese register
Malta	Not in Maltese register [How about foreign register?]
Nigeria	No
Norway	No
Singapore	No
South Africa	No
Slovenia	Yes, but only if the ship is registered in Slovenian register
Spain	Yes
Sweden	Yes
USA	No
Venezuela	Yes

Recognition of foreign judicial sales of ships

Question 2.3:

Is it necessary to provide written notice to the registered ship-owner before a ship is sold by way of judicial sale? And, is there any procedure by which the registered ship-owner may challenge the sale of the ship? If yes, please explain in detail.

Summary of the replies:

Argentina	Yes. Within 5 days shipowner can file any of the 5 defenses available. Any party with an interest can apply for nullity.
Australia	No. "However, in circumstances where a registered ship owner does become aware of the judicial sale and is aggrieved by that process then s/he can file a notice of appearance in relation to the <i>in rem</i> proceedings as well as a formal application."
Belgium	Yes. But remittance of deed of service to Master is a service to the ship owner. The shipowner, at various steps in the proceedings, has the occasion to challenge the enforcement.
Canada	No. "It is not required to serve the ship owner personally." <i>In rem</i> "But, the minimum requirement under the Federal Court Rules is that the ship must be served with the " <i>in rem</i> " legal proceedings [...] The ship-owner may apply to set aside the default judgement and /or set aside the Order of Appraisalment and Sale, and/or challenge the actual sale." If Shipowner is served personally or intervenes: "In the event that the ship owner is served personally, or instructs legal counsel to seek leave to intervene on the ground that it has a proprietary interest, then the claimant is required to serve on that legal representative all of the legal proceedings to be filed into court and to give notice of its intentions with respect to the ship [...]" and the course of the procedure. "The ship owner has the right to contest and challenge each step being undertaken by the claimant."
China	"Yes. The ship-owner may challenge and apply for a review of the ruling of the judicial sale within 5 days of receipt of the notice during which period the sale should be suspended. [...]"
Croatia	Yes. "If the ship-owner is not in Croatia or the ship-owner's seat is unknown, the court will appoint the master as the ship-owner's attorney-in-fact, and shall deliver the writ of execution to the master." "The ship-owner may challenge the sale of the ship by lodging an appeal against the writ of execution. [...]"
Denmark	Yes, the court must. However, only if the address [...] is apparent from the transcript of register provided by the creditor claimant [...]" "The debtor can not challenge the judicial sale but he can appeal the attachment levied on the ship to the ordinary courts within 4 weeks after the attachment. This is not to be confused with the 4 week appeal period after the judicial sale auction. If the attachment is appealed, the bailiff's court will have to wait for the decision from the ordinary courts before it can proceed with the judicial sale, cf. the AJA, Section 542 (2)."

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Dominican Republic	Yes. Service on master or local agent is usually accepted by court.
France	Yes. Shipowner can challenge the sale on a number of grounds.
Germany	Yes. (“to the debtor, i.e. the registered ship owner”) The sale may be suspended in case – “the debtor can prove that he is able to pay the claim amount within 6 months”; – “of extraordinary hardship [...]”. And, generally, “orders rendered by the local court competent for execution are subject to appeal with the competent regional court.”
Italy	Yes. Shipowner may oppose the Sale on the ground that the claimant has no enforceable title.
Japan	Yes. “Upon application, the court will order the bailiff to serve the written notice, and the bailiff will serve the documents on the master who is deemed to have capacity to represent the ship owner.” “The ship owner or the debtor may contest the court order commencing the judicial sale, on grounds that the claim or maritime lien (or other basis to the judicial sale of the ship) does not exist or has been extinguished or that the procedure of arrest and/or judicial sale is against the law.”
Malta	Yes (nuanced). And the Shipowner may file a response opposing the request of the execution creditor
Norway	Yes. (Master has authority to receive notice?) “The ship-owner may demonstrate or argue that the conditions for forced sale are not fulfilled – the claimant/creditor has no claim or the claim is paid, the claim has not fallen due etc.”
Slovenia	No.
South Africa	“No, there is no formal requirement, but it is most unlikely that an Applicant will succeed in its application for the judicial sale of a ship if it has not notified the owner, operator and/or manager of the ship [...]” “The ship-owner is perfectly entitled to oppose the application at any time prior to the interim order being made final [...]”
Spain	No. “Challenge can be made by a claim for ownership where the true Owner is not the Defendant or by third-party action of prior right of claim than the one shown by the Plaintiff.”
Sweden	Yes. “An arrest, or a seizure, or an auction or a distribution of proceeds may all be appealed separately.” USA “Written notice need not necessarily be given to the registered owner of a ship before a judicial sale. In fact, U.S. law does not currently require notice of the arrest of the vessel to be provided to the vessel’s registered owner. Notice to the master or individual in charge of the vessel is deemed sufficient to notify the vessel’s owner of the arrest. A person who asserts a right of possession or an ownership interest in an arrested vessel may, however, file a statement of right or interest in the vessel and an answer following the arrest of a vessel. SUPP. ADM. R. C(6).
Venezuela	Yes. “The judicial sale might be challenged by a repossession action, under article 584 of the Civil Procedure Code and by a constitutional protection action.”

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Question 2.4:

Is it necessary to provide written notice to the registered mortgagees, the known holders of maritime liens and/or the known holders of other charges in respect of the ship before the ship is sold? And, is there any procedure by which the mortgagees and/or the aforesaid holders may get access to the distribution of the proceeds of the sale of the ship? If yes, please explain in detail.

Summary of the replies:

Argentina	Yes.
Australia	“No, there is no requirement to provide written notice specifically directed to known registered mortgagees, holders of maritime liens or charges. However, there is a general requirement pursuant to the Admiralty Rules [...] for the Admiralty Marshal to publish, by way of a prescribed Notice of Application to Determine Priorities, the fact that a ship is about to be sold or has been sold.”
Belgium	Yes. And advertisement.
China	Yes.
Croatia	Yes.
Denmark	Yes, to “all parties with registered encumbrances over the ship. However, only if the addresses of these persons/companies are apparent from the transcript of register provided by the creditor claimant, cf. the AJA, Section 544” “Although this is not clear from the AJA we are the opinion that written notice should also be given to known holders of maritime liens and other charges in respect of the ship. However, if this is not done it is doubtful if there would be any consequences of not doing so. Only registered encumbrances are on the face of things required to be notified. Others are assumed to be notified through the official announcements in the Danish Official Journal etc.”
Dominican Republic	No.
France	To the mortgagee of a French registered ship
Germany	Yes.
Italy	Yes.
Japan	The court shall provide written notice to “known” creditors. If such a creditor’s address is overseas or unknown, the court will make a public notice to them. Notice to tax authority is also provided for. “These creditors will be treated as the creditors who are entitled to receive a share of the proceeds of the judicial sale of the ship. The other creditors will not receive the court’s notice, and they will have to apply for another judicial sale or claim a share of the proceeds in order to be included in the distribution of the proceeds of the judicial sale of the said ship.”
Malta	“To the parties who have filed an arrest warrant against the vessel, if the mortgagee has not filed such arrest warrant than there is no obligation to notify him in writing. The purchase price of the vessel will be deposited in Court. Under Maltese law, when there is deposited money in respect of which more than two parties allege claims of preference or priority, the Court will publish a notice calling upon all interested parties to put in their respective claims [...]”

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Norway	Yes, to all known creditors.
Slovenia	No, creditors may intervene in the proceeding with defences both procedural or substantive.
South Africa	“There is no specific requirement in the Act or the admiralty rules for the mortgagee bank to be advised of the sale. Given the general obligation upon the Applicant to advise all parties that may be affected by the arrest, the Applicant may make enquiries regarding the presence or otherwise of a mortgagee bank.”
Spain	
Sweden	Yes.
USA	
Venezuela	Yes.

Question 2.5:

Following the judicial sale of a ship, will a document such as an order or a certificate be issued to the purchaser by the court that conducted or controlled the judicial sale of ship, to the effect that the ship is sold free of all mortgages, liens, charges and encumbrances, or that the purchaser has acquired a clean title of the ship from the judicial sale?

Summary:

In most country a document of title is issued, either because it is so provided by statute or as a matter of practice.

In some cases, such as in Japan, for Japanese ships, there will not be such an instrument but the ship registrar will be ordered to change ownership and delete all registered mortgages or other encumbrances.

Whether the document also mentions the freedom of encumbrances and to what extent, varies from country to country.

Summary country per country:

Provided always a number of conditions are met:

Argentina	Yes.
Australia	Yes.
Belgium	Yes, the purchaser will receive a deed. The statute does not provide for the duty to the court marshal to issue a deed according to which the ship was sold free of incumbrances, however, it will usually include the sale conditions which ordinarily mention that the ship will be sold free of encumbrances or at least that according to Belgian law, the ship is sold free of encumbrances. .
China	Yes.
Canada	“The sale is confirmed by an order of the Court declaring the new buyer to be the owner of the ship free of any liens under Canadian maritime law and directing the Sheriff to sign and issue a Bill of Sale to the buyer on payment of any balance of sale price owing.”
Croatia	“The court will issue an order that the ship be delivered to the purchaser, that the purchaser be entered in the ship register as the owner of the ship and that all encumbrances and charges be deleted from the ship register.”

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Denmark	Yes, “the buyer be entitled to a title deed[...]” “This can then be used to register the transfer of title in the Danish Ships Register/the Danish International Register of Ships.” “In our experience it is not common for the bailiff’s court to issue a certificate stating explicitly that the ship has been sold free of all mortgages, liens, charges and encumbrances and/or that the buyer has acquired clean title to the ship. Accordingly, the buyer can not expect to receive a formal Bill of Sale.”
Dominican Republic	Yes.
France	The purchaser receives from the Court an enforceable copy of the auction judgment. By operation of French law, the purchaser acquires a clean title.
Germany	Yes.
Italy	Yes.
Japan	Japan registered ships: no need for a bill of sale or such instrument, the ship registrar will be ordered to change ownership and delete all registered mortgages or other encumbrances. Although maritime liens may not be registered in Japan, such liens will also be extinguished by the provisions of the <i>Civil Enforcement Law</i> . Ship not registered in Japan: statute does not provide for the duty of issuing such instrument. “However, in practice, the courts issue a certificate to the overseas register of ships to certify <i>as under Japanese law</i> (i) that the ship was sold by judicial sale to the successful bidder, and (ii) that there are no longer any mortgages or other encumbrances over the ship.”
Malta	Yes.
Nigeria	Yes.
Norway	If the buyer of the vessel so requires, the court shall issue a bill of sale for the vessel showing if any encumbrances has been taken over by the buyer and list the rights in the vessel that has been overturned / deleted as a consequence of the forced sale process
South Africa	Bill of sale issued, [showing she is sold clean and free?]
Spain	Yes.
Sweden	“Evidence of title will be given by a protocol of the auction signed by the Authority. This legal title is the best title a buyer can obtain under Swedish law, in the sense that the sale extinguishes any pre-existing rights against the vessel, except for those mortgages which survive with the buyer’s consent.”
USA	“U.S. law does not expressly provide for the issuance of such a document. However, U.S. law does expressly provide that a sale by a district court in an in rem action brought to enforce a preferred mortgage lien acts to terminate any lien, maritime lien or possessory common law claims in the vessel. 46 U.S.C. § 31326(a). The order of sale ordinarily states that the vessel will be sold as is, where is, and free and clear of any claims, liens, maritime liens, rights in rem, rights of redemption, or encumbrances whatsoever. The Bill of Sale issued by the U.S. Marshal to the confirmed purchaser may also recite that the vessel has been sold free and clear of all liens. The standard form Bill of Sale by Governmental Entity Pursuant to Court Order or Administrative Decree of Forfeiture (CG-1356) (Rev. 06/04) does not contain this language. Nevertheless, the

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Venezuela form's instructions state: "Use Remarks' section above if vessel is not sold free and clear . . ."
Yes.

Question 2.6:

Is there any difference in procedure if the ship to be sold by way of judicial sale is a foreign ship? If yes, please highlight the difference in detail.

Summary: Most countries make no difference between domestic and foreign ships. Some countries provide for adapted notifications or advertisement when the ship is registered abroad. Norway limits the possibility to proceed to a judicial sale, when the ship is foreign.

COMMENTARY ON ANSWERS TO THE THIRD GROUP OF QUESTIONS

LOUIS N. MBANEFO (SAN)¹

GENERAL COMMENTS

The focus of the third set of questions is on the effects of a judicial sale of ships and the object is to ascertain the legal effects or consequences of a judicial sale in the different jurisdictions. They are broken down into seven questions.

The questions are directly related to the effects of a judicial sale in each particular jurisdiction without consideration of the possible extra-territorial effect or implications. In other words, we are not concerned with the interpretation or effect given to the judicial sale in a particular jurisdiction by other jurisdictions.

Some 23 jurisdictions have replied to the questionnaire and I propose to categorize the replies received with a view to observing common trends which may give rise to a uniformity of approach.

The main problem with the questionnaire is that in some cases the answers were imprecise and it was necessary to use deductive logic to arrive at the answer. There are cases where the answer was “yes” but in actual fact, “no” was meant. In others, further and better particulars would have been useful.

In a few cases, the specific questions were not answered and it was necessary to deduce the answer from answers to other questions.

I crave the indulgence of those countries whose answers I have not properly understood.

Having said that, I believe that the answers received were not unexpected.

I propose to begin by summarizing the questions before proceeding with a categorization of the answers.

SUMMARY OF THE QUESTIONS

The 1st Question is whether a judicial sale operates to transfer 100% ownership in the vessel to the purchaser.

¹ Senior Advocate of Nigeria

The 2nd Question is whether a judicial sale extinguishes the previous ownership of the vessel.

The 3rd Question is whether a judicial sale extinguishes all mortgages, liens, charges or encumbrances attached to the ship before sale.

The 4th Question is whether a purchaser will acquire a clean title over the ship good against the whole world.

The 5th Question relates to registration. It asks whether a judicial sale automatically annuls the previous registration of the ship in the national ships register.

The 6th Question is whether on production of relevant documentation from the court certifying the judicial sale the Registrar of Ships will delete the previous registration or deregister the ship.

The 7th Question is whether on production of the relevant documentation from the court the purchaser will be registered as the new owner, irrespective of whether the previous ownership was deleted.

ANALYSIS OF THE ANSWERS

Question 1

Whether a successful bidder gets 100% ownership of the vessel following a judicial sale.

The countries which answered in the affirmative are:

Argentina, Belgium, Canada, China, Denmark, Dominica, France, Germany, Italy, Malta, Nigeria, Singapore, South Africa, Spain, Sweden, USA, Venezuela

Comment:

All jurisdictions are unanimous that a judicial sale operates to transfer 100% ownership to the purchaser. The answer is not unexpected because it is fairly obvious that a purchaser from the right source becomes the new owner of the ship.

Whilst the relevant judicial sale may be by private treaty or auction, the question was not specific as to the nature of the judicial sale. Some of the responses specified that in order to achieve the desired result, the sale must be preceded by an auction. The countries which specifically require sale by auction are Denmark, France, Germany and Sweden.

In summary, we can say that a judicial sale, whether by private treaty or by auction, depending on the mode of sale specified by each jurisdiction, transfers 100% ownership in the vessel to the purchaser.

Question 2

Whether previous ownership of vessel is extinguished by judicial sale The following countries answered in the affirmative: Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, France, Germany, Italy, Malta, Nigeria, Norway, Singapore, S. Africa, Spain, Sweden, USA, Venezuela.

Comment:

Again there is unanimity on this. It is a corollary to question 1. If the buyer gets 100% ownership, then it is obvious that the previous ownership will be extinguished.

However, three jurisdictions specified some conditions to their answers. Denmark requires that the sale be conducted “properly and justifiably” in order to achieve the desired result.

Germany’s condition is that the sale should have been by auction. And Norway adds the proviso that the buyer should have paid the purchase price.

Question 3

Whether judicial sale extinguishes all mortgages, liens, charges or encumbrances attached before sale.

Yes: Argentina, Brazil, Canada, China, Dominica, France, Italy, Malta, Nigeria, Singapore, S. Africa, Sweden, USA, Venezuela.

Not Necessarily: Belgium, Denmark, Germany, Norway.

No: Spain

Comment:

Most jurisdiction agree that judicial sale extinguishes mortgages, liens, charges or encumbrances. Only Spain gave a negative response.

Belgium, Denmark, Germany and Norway have certain reservations to the automatic extinction of mortgages etc.

Belgium requires that there be de-registration of charges at the registry. Denmark requires that the sale price is distributed amongst the owners of encumbrances on the ship.

Germany says that for foreign ships, the sale extinguishes mortgages etc. For German ships, mortgages etc. will be extinguished, with the exception of those which rank ahead of creditors’ claims and those which are registered in the court or in the ship’s registry.

In Norway, registered non-monetary claims are not extinguished.

Question 4

Whether purchaser acquires a clean title against the whole world.

Yes: Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, France, Germany, Italy, Malta, Nigeria, Singapore, S. Africa, Sweden, USA, Venezuela.

Not Necessarily: Norway, Spain.

Comment:

Again there is almost unanimity that the purchaser acquires a clean title. Only Norway and Spain have reservations. Norway requires the buyer to respect non-monetary claims with priority over his own. Spain says, without elaborating, that the title may be good but not always clean.

Question 5

Whether judicial sale automatically annuls the previous registration (i.e. without the necessity of any action on the part of the purchaser).

No: Argentina, Belgium, Canada, China, Denmark, Dominica, France, Germany, Malta, Nigeria, Norway, S. Africa, Singapore, Spain, Sweden.

Yes: Brazil, Italy and Venezuela

Comment:

With the exception of Brazil, Italy and Venezuela all jurisdictions require some action before the previous registration is deemed to have been annulled.

Brazil says that upon evidence of transfer of ownership or the court's ruling, the previous registration would be automatically annulled.

Italy and Venezuela simply agree that the previous registration is automatically annulled.

Question 6

Whether on production by the purchaser of relevant court order or evidence of auction sale, the Registrar will delete or de-register ship.

Yes: Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, Italy, Malta, Nigeria, Norway, S. Africa, Spain, Sweden, USA, Venezuela. (France, no answer)

Not necessarily: Germany, Singapore.

Comment:

In most jurisdictions, production of evidence of a judicial sale will enable the Registrar to delete or de-register the previous owner.

However, in Germany and Singapore the position is less certain.

In Germany, the ownership remains in the register if certain criteria for entry in the German register are fulfilled.

In Singapore, the operative document is the Bill of Sale, rather than the court order.

Question 7

This question relates to the registration of the new owner. It asks whether registration of the new owner is automatic upon production of relevant court documentation **without deletion of the previous owner**.

Yes: Argentina, China, Dominica, Italy, Malta, Nigeria, Norway, Spain, Venezuela.

No: Belgium, Brazil, Canada, Denmark, Germany, Singapore, South Africa, Sweden, USA. (France: no answer)

Comment:

There is almost an equal division between the jurisdictions that apply automatic registration of the new owner upon production of relevant documentation and those jurisdictions which do not.

Some jurisdictions require that there should be prior proof of deletion of the previous registration of the ship, and some that there be proof of deletion from the foreign register and a certificate that the vessel is free of encumbrances. Other jurisdictions simply agree, without elaboration, that the registration of the new owner is automatic.

Malta provides that it depended on whether the register “has been closed”. I would have wished for further and better particulars as to what that means.

CONCLUSIONS

From the fore-going analysis, the following conclusions may be drawn:

1. In every jurisdiction, a judicial sale operates to transfer 100% ownership in a ship to the purchaser following a judicial sale.
2. In every jurisdiction the previous ownership of a ship is extinguished by a judicial sale.
3. In most jurisdictions a judicial sale extinguishes all mortgages, liens, charges and encumbrances which attached to the vessel before sale.
4. In almost every jurisdiction the purchaser from a judicial sale acquires a clean title against the whole world.
5. In almost every jurisdiction a judicial sale does not automatically annul the previous registration of the vessel.
6. In almost every jurisdiction production of evidence of a judicial sale will enable the registrar to delete or de-register the previous ownership.
7. In only half of the jurisdictions will the new owner be registered automatically upon production of relevant documentation.

RECOGNITION OF THE LEGAL EFFECTS OF FOREIGN JUDICIAL SALES OF SHIPS

FRANK SMEELE¹

Introduction

1. The fourth group of questions in the Questionnaire relates to the recognition of the legal effects of foreign judicial sales of ships. As is observed in the explanatory note to this group of questions², in many jurisdictions no legal provisions are readily available as to when and/or on what grounds conditions, a foreign judicial sale of a ship will be recognized. This is confirmed by some of the responses to the Questionnaire, which in the absence of statutory provisions or relevant case law cannot provide clear answers to some of the questions³.

Object of recognition

2. A first preliminary point made in one the responses⁴ to the Questionnaire is that it is usually not the foreign judicial sale of a ship as such which is the object of recognition, but rather a foreign court's decision or statement in which the legal fact of the change of ownership of the ship resulting from the judicial sale is reported or acknowledged.

3. In general as a matter of international law, sovereign states are not obliged to recognize the decisions of foreign courts. This may be different however where states have become party to bilateral treaties or even multilateral instruments for the recognition and enforcement of foreign decisions such as the EU Brussels-I Regulation No. 44/2001⁵ and the Lugano Convention

¹ Professor of Commercial law, Erasmus University School of Law and Attorney at Van Traa Advocaten N.V., Rotterdam.

² Questionnaire, p. 4-5.

³ See e.g. the responses from the MLA of Australia, p. 10.

⁴ See Germany, p. 11-12.

⁵ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *Official Journal (OJ)* 16 January 2001 L 12/1 p. 1-23, which is binding on all 27 EU member states.

1988⁶, in which case the treaty/instrument in question will determine both whether there is an obligation to recognize a foreign decision and the legal consequences of such recognition⁷. In view of its importance in the relations between 27 European States and its influence beyond Europe as a model for the recognition of foreign decisions, the Brussels-I Regulation will be drawn into the discussion below of the responses to the Questionnaire as well.

4. Even in the absence of an obligation under international law, states may recognize decisions of foreign courts voluntarily in the exercise of their sovereign powers based on the principle of comity in international relations if there is reciprocity, i.e. if under similar circumstances the foreign state would recognize decisions originating from that state as well⁸. In that case, the recognition of the foreign decision is ultimately based on the domestic laws of the state where recognition is sought.

Meaning of “recognition of legal effects”

5. A second preliminary question also raised by the response from the German MLA⁹, is what exactly is meant by “recognition of the legal effects”. Apparently, the Questionnaire presumes that recognition means that a foreign judicial sale of a ship effected in a foreign country is given *the same legal effect as a domestic judicial sale* in the country where recognition is asked¹⁰. In this approach the legal effects of the foreign judicial sale in the country of origin are assimilated to those that a domestic judicial sale in the country of recognition would have.

6. However, an alternative approach in international procedural law understands recognition to mean that the legal effects of a foreign judicial sale in the country of origin are *extended* to the country of recognition¹¹. In that

⁶ Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (88/592/EEC), Lugano, 16 September 1988, *OJ* 25 November 1988 L 319, p. 9-48. A replacement convention was signed at Lugano on 30 October 2007. The Lugano Convention is binding between the 27 EU member states and Switzerland, Norway and Iceland.

⁷ The response of the Spanish MLA, p. 1 and 3 mentions also the 1993 Maritime Liens and Mortgages Convention (MLM). Article 12.5 MLM provides that in case of a forced sale of a vessel in a state party, the registrar in another state party must recognize the certificate issued by the competent authority in the first mentioned state party that a vessel was sold free of all registered mortgages, ‘hypothèques’, or charges, except those assumed by the purchaser, and of all liens and other encumbrances.

⁸ See e.g. United States, p. 11.

⁹ See Germany, p. 12.

¹⁰ See expressly to this effect the explanatory note to the fourth group of questions of the Questionnaire, p. 5 and Question 4.1.

¹¹ Although the concept of “recognition” is not defined in the Brussels-I Regulation, the European Court of Justice has used its power to give autonomous and binding interpretations of EU law in the case of *Horst Ludwig Martin Hoffmann v. Adelheid Krieg* (Case 145/86), [1988] ECR, 645, 666, § 10 to conclude that “a foreign judgment which has been recognized by virtue

case, the primary question is to determine what legal effects a foreign judicial sale has under the laws of the country of origin. Recognition of legal effects then means that these legal effects are “exported” to the country of recognition.

7. As is pointed out in the response of the German MLA, the difference in approach might result in materially different results when the legal effects of a judicial sale in the country of origin are less or more far-reaching than in the country of recognition. Furthermore, it must be observed that even in the latter approach, the recognition of a foreign decision cannot lead to legal consequences which (manifestly) violate the public morals or public order in the country of recognition¹².

Question 4.1 (a) Will a judicial sale of a ship accomplished in a foreign jurisdiction be recognized in your jurisdiction as having the same legal effects as the judicial sale of a ship accomplished in your jurisdiction?

8. It follows from the responses to the Questionnaire that in principle virtually all¹³ countries allow the foreign judicial sale of a ship to be recognized by the domestic courts, provided that the applicable requirements under the domestic law for such recognition are met. Unfortunately however, it is less clear from the responses received, which meaning “recognition of legal effects” has under these national laws. Many responses do not address the issue at all¹⁴, whereas others do so implicitly and only a few expressly.

9. Based on the responses received, it seems that a foreign judicial sale of a ship has (or may have) the same legal effects as a domestic judicial sale of

of article 26 of the Convention (= article 33 Brussels-I) must in principle have the same effects in the state in which enforcement is sought as it does in the state in which the judgment was given.” This finding was based amongst others on the officially published report of the drafters of the 1968 Brussels Convention, the precursor of the Brussels-I Regulation 44/2001. See: Jenard-Report to the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, *OJ* 1979 C 59/1, p. 43: “Recognition must have the result of conferring on judgments the authority and effectiveness accorded to them in the State in which they were given.” See also: Magnus/Mankowski/Wautelet, *Brussels I Regulation* (2007), Art. 33, Notes 3-6. Similarly Article 17.1 of the EU Insolvency Regulation No 1346/2000 defines the “effects of recognition” as follows: “The judgment opening the proceedings ... shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings’.

¹² Compare e.g. the refusal ground in Article 34.1 Brussels-I: “A judgment shall not be recognised: 1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;”

¹³ The exception seems to be Japan, p. 6.

¹⁴ This is the case with the responses received from the MLA’s of Australia, Belgium, Brazil, Canada, China, Italy, Malta, Nigeria, Slovenia, Spain and Venezuela.

Recognition of foreign judicial sales of ships

a ship under the laws of Argentina¹⁵, Denmark¹⁶, France¹⁷, Norway¹⁸, Singapore¹⁹ and the United States²⁰ (assimilation rule). On the other hand it seems that the legal effects of the foreign judicial sale under the laws of the country of origin may be extended to the country of recognition in case of the Dominican Republic²¹, Germany²², South Africa²³ and Sweden²⁴ (extension rule). However, these results must be considered with caution because – as observed above – the Questionnaire did not specifically address this issue, and therefore it may have been overlooked or misinterpreted by some of the respondents²⁵.

Question 4.1 (b) If yes, please list the circumstance and explain the conditions for such recognition.

10. An analysis of the responses to the Questionnaire received shows that the circumstances and conditions for the recognition of foreign judicial sales vary considerably from one country to the next. Also the manner in which the responses to the Questionnaire have been drafted diverges considerably from very brief in some cases to quite elaborate or even comprehensive in others. It follows that the aim of this contribution cannot be to give a comparative overview or in-depth analysis of the prevailing requirements for recognition of judicial sales of ships.

11. Instead it will be attempted to identify trends as to the frequency and nature of requirements mentioned in the responses. In this connection it should be observed that although an individual requirement discussed below may be a *necessary* condition for recognition of a foreign judicial sale in a certain state, it does not follow that it is also a *sufficient* condition for recognition because many legal systems impose several requirements simultaneously. On a scale ranging from most to least often mentioned, the following circumstances and conditions may be listed as (possibly) relevant to the international recognition of foreign judicial sales of ships.

¹⁵ See Argentina, p. 9.

¹⁶ See Denmark, p. 17.

¹⁷ See France, p. 3.

¹⁸ See Norway, p. 11.

¹⁹ See Singapore, p. 8.

²⁰ See United States, p. 11.

²¹ See the Dominican Republic, p. 8.

²² See Germany, p. 12.

²³ See South-Africa, p. 13-14.

²⁴ See Sweden, p. 9.

²⁵ It is remarkable to note that each of the groups includes two EU member states, although as explained above in footnote 11, in the autonomous and binding interpretation of the ECJ “recognition” under article 33 Brussels-I means the extension of the legal effects of the decision from the country of origin to the country of recognition.

An application to the competent court in the country of recognition

12. In order to obtain recognition or even approval for enforcement (Exequatur) of the foreign judicial sale in another jurisdiction, several legal systems require that the interested party should make a formal application to the competent court in the country of recognition²⁶. Within the European Union, judgments from courts of member states shall be recognized automatically (*ipso iure*) without any special procedure being required²⁷. However, any interested party who raises the recognition of a judgment as a principal or an incidental issue in a dispute before the court of a member state may apply for a declaratory decision that the judgment be recognized²⁸.

13. It is stressed in several of the responses that it is not within the power of a court in a country of recognition to overrule the judicial sale before a foreign court²⁹. A reopening of the court proceedings which led to the judicial sale or reassessment of the underlying dispute between the parties is out of the question³⁰. At best the court in the country of recognition may give or withhold recognition of the foreign judicial sale within its jurisdiction³¹.

An authentic court document evidencing the judicial sale

14. A frequently made requirement for recognition is that the foreign court which ordered the judicial sale should issue some sort of written statement in evidence of the change of ownership effected by the judicial sale³². It is clear that the recognition process of the foreign judicial sale in other countries is greatly facilitated by such an authentic document originating from the court which presided over the judicial sale, because it will be easier for the court in the country of recognition to establish the meaning and legal effect of the court statement than to evaluate and interpret the foreign court proceedings leading up to the judicial sale³³.

Scrutiny of court proceedings leading up to the foreign judicial sale

15. The non-observance of essential procedural safeguards in the court

²⁶ See Brazil, p. 5, Canada, p. 8, France, p. 3, Nigeria, p. 8, Slovenia, p. 6.

²⁷ Article 33.1 Brussels-I.

²⁸ Articles 33.2 and 33.3 Brussels-I.

²⁹ See Belgium, p. 12, France, p. 3 and Germany, p. 14.

³⁰ See Belgium, p. 13, Germany, p. 14 and Malta, p. 11 ('*res judicata*').

³¹ See Germany, p. 14.

³² See Argentina, p. 9, Belgium, p. 12, Canada, p. 8, Denmark, p. 17, 15, Dominican Republic, p. 8 and Germany, p. 11.

³³ Nevertheless, it follows from the responses of the MLA's of Canada, p. 8 and Nigeria, p. 8 that in those countries details about the court proceedings leading up to the foreign judicial sale must be provided to the court before which recognition of the judicial sale is asked.

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proceedings leading up to the foreign judicial sale is often mentioned obstacle to recognition in another state. It seems that in some countries the interested party must satisfy the court that the foreign judicial sale met certain minimum standards³⁴. More often however the breach of certain elementary principles of procedural law may be invoked as a ground for refusal of recognition³⁵.

16. This latter point is illustrated by the refusal ground in article 34.2 Brussels-I³⁶. If the foreign judicial sale of a ship was conducted in the absence of the debtor (the ship-owner), the resulting decision may be refused recognition if the debtor was not given timely notice of the (commencement of) court proceedings through the service of documents³⁷.

17. Another ground for the refusal of recognition may be that – at least from the perspective of the court in the country of recognition – the court which ordered the judicial sale of the ship lacked proper jurisdiction to do so³⁸, e.g. because at the time of the judicial sale, the ship was not located in the country where the judicial sale took place³⁹. Interestingly, under Brussels-I the lack of jurisdiction is no ground for the refusal of recognition of a judgment from a court from a member state⁴⁰. However, this rather idealistic rule cannot be separated from the uniform grounds of jurisdiction given in Chapter II of the Brussels-I Regulation and the overriding principle of mutual trust in the administration of justice within the European Community⁴¹ which precludes also re-evaluation of the merits of the decision by the courts in country of recognition⁴².

³⁴ See e.g. United States, p. 11, Canada, p. 9 (below question 4.2) and Venezuela, p. 3 (below 4.4).

³⁵ See e.g. Venezuela, p. 3 “lack of due process”. See also Denmark, p. 17, 15-16 and Norway, p. 11: failure to observe important procedural formalities in the course of the foreign judicial sale (e.g. announcement, summons/notification and distribution of proceeds) under the applicable law of the court of origin (*lex fori*).

³⁶ This provision reads as follows: I “A judgment shall not be recognised: ... 2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;”.

³⁷ Cf. Canada, p. 9, Denmark, p. 17, 15-16, Germany, p. 13, Italy, p. 8, Norway, p. 11, Sweden, p. 9, United States, p. 11 and Venezuela, p.3.

³⁸ See Denmark, p. 17, 15-16, Germany, p. 12, Italy, p. 8, Malta, p. 10, South Africa, p. 14 and the United States, p. 11.

³⁹ See: Denmark, p. 17, 15, Malta, p. 10, Norway, p. 11, Sweden, p. 9 (below 4.4).

⁴⁰ See article 35.3 Brussels-I “Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed.”

⁴¹ See consideration 16 of the Preamble to the Brussels-I Regulation No. 44/2001.

⁴² See Germany, p. 13. See also Article 36 Brussels-I “Under no circumstances may a foreign judgment be reviewed as to its substance.”

Conflicting decisions

18. Another ground to refuse recognition of a foreign judicial sale is that it is irreconcilable with another decision between the parties on the same subject matter from a court in the country of recognition⁴³ or a third country. These are also grounds of refusal under the Brussels-I Regulation⁴⁴.

Public order exception

19. Although not often expressly mentioned in the responses to the Questionnaire, it is safe to presume that no court in any country will recognize a foreign decision if it is deemed to be contrary to the public policy or public order in the country of recognition⁴⁵, e.g. if the court order for the judicial sale was obtained by fraud⁴⁶. This refusal ground is also given under Brussels-I but only if the foreign decision is “manifestly contrary to the public policy of the member state where recognition is sought”⁴⁷.

Reciprocity in recognition

20. The recognition of the foreign judicial sale may also depend on whether there exists reciprocity in the recognition of judgments between the country of origin and the country of recognition⁴⁸.

Finality and binding force

21. A last requirement for recognition mentioned is that in order for a foreign judicial sale of a ship to be recognized, it must be legally binding and final in the sense of no longer being subject to appeal⁴⁹. Under Brussels-I, the finality of a judgment is no precondition for recognition, although the fact that appeal

⁴³ See Brazil, p. 5, Germany, p. 13, Italy, p. 8 and Venezuela, p. 3 (below 4.4). Under the law of Italy it seems that even pending court proceedings between the parties on the same subject matter may be a ground for refusal of recognition.

⁴⁴ See art. 34.3 and 34.4 Brussels-I: “A judgment shall not be recognised: ... 3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought; 4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.”

⁴⁵ See Canada, p. 9, Germany, p. 12, Italy, p. 8 and Sweden, p. 9. In the response of Brazil, p. 5 an offence against the sovereignty of Brazil as country of recognition is mentioned as a ground for refusal.

⁴⁶ See South Africa, p. 14.

⁴⁷ See article 34.1 Brussels-I.

⁴⁸ See China, p. 3. Under Brussels-I reciprocity of recognition of judgments is guaranteed between courts of the EU member states. Reciprocity is also one of the underlying principles of the rule of comity between sovereign states in international relations.

⁴⁹ See Italy, p. 8.

has been lodged against the judgment in the country of origin, provides the court in the country of recognition with the discretionary power to stay the proceedings for the recognition of that judgment⁵⁰.

Question 4.2 Would a court in your country have jurisdiction over a case brought by the previous ship owner and challenging the foreign judicial sale of a ship?

Question 4.3 Would a court in your country have jurisdiction over a case brought by the holder of a maritime lien, mortgage or other charge attached to the ship prior to the foreign judicial sale of a ship and challenging the foreign judicial sale of a ship?

22. As appears from the responses received, the largest group of MLA's has interpreted these questions to be an inquiry into their country's rules on jurisdiction and not into the likelihood that their courts would overturn a foreign judicial sale of a vessel⁵¹. As a result a large number of responses affirms that if under these domestic jurisdiction rules, the courts of their country have personal jurisdiction over the relevant parties⁵² and/or if the disputed vessel happens to be within the jurisdiction⁵³, then the previous ship-owner or the holder of a maritime lien, mortgage or other charge attached to the ship prior to the foreign judicial sale may approach the competent court(s) in their country to challenge the foreign judicial sale of the vessel. According to a much smaller group of responses the courts in their country would decline jurisdiction on the ground that the foreign judicial sale should be challenged before the local courts in the country of origin⁵⁴.

Question 4.4. If the court in your country would have jurisdiction over the cases mentioned in Questions 4.2 and/or 4.3, which country's law would apply with regard to the substantive issues of the dispute?

23. As follows from many of the responses received, the conflict rules

⁵⁰ See: art. 37 Brussels-I "1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged. 2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the state of origin, by reason of an appeal."

⁵¹ See Canada, p. 9 and Malta, p. 11.

⁵² See Australia, p. 11, Brazil, p. 6, Canada, p. 9, China, p. 3, Denmark, p. 17, Dominican Republic, p. 8, Germany, p. 13, Italy, p. 8, Japan, p. 6, Malta, p. 11, Nigeria, p. 9, Norway, p. 11, South Africa, p. 14, Singapore, p. 8, Spain, p. 3, Sweden, p. 9, United States, p. 11, Venezuela, p. 3.

⁵³ See Australia, p. 11, Canada, p. 9, China, p. 3, Germany, p. 13, Japan, p. 6, Nigeria, p. 11, Norway, p. 11, South Africa, p. 14, Singapore, p. 8, United States, p. 11, Venezuela, p. 3.

⁵⁴ See Argentina, p. 9, Belgium, p. 12 (impliedly), Brazil, p. 6, France, p. 3, Slovenia, p. 7.

determining the applicable law may vary considerably not only from one country to the next, but also within a country depending on the substantive issue which is at stake⁵⁵. Several legal systems apply the law of the court (lex fori country of origin) which ordered the judicial sale in relation to procedural issues surrounding the foreign judicial sale⁵⁶, although others apply basic principles of the law of the court (lex fori of the country of recognition) for the scrutiny of foreign court proceedings in relation to the recognition and enforcement of the foreign judicial sale of the ship⁵⁷.

24. With regard to the creation, transfer, extinction and priority order of property and security rights (e.g. mortgage or hypothèque) in the ship, several legal systems apply the law of the flag state of the ship⁵⁸, whereas at least one other applies the law of the country of registration of the ship where it is different from that of the flag state⁵⁹.

25. With regard to the applicable law to maritime liens there is much diversity. In one country the 1967 Convention on Maritime liens and Mortgages⁶⁰ applies, in another the 1993 Maritime Liens and Mortgages Convention⁶¹, yet another submits maritime liens to the law applicable to the secured claim⁶² and finally two others apply the law of the court (lex fori) of the country of recognition to issues (e.g. the existence and priority order) relating to maritime liens⁶³.

Question 4.5 If a ship which is entered in a register of ships in your jurisdiction is sold in a foreign jurisdiction by way of judicial sale, will the register of ships in your jurisdiction delete the registration of that ship upon notice of the foreign judicial sale or upon production by the purchaser of a document such as an order or a certificate issued by the foreign court that conducted and controlled the sale? If yes, please explain the circumstances and conditions in detail.

26. As follows from the responses to the Questionnaire received, virtually all countries require that the purchaser of a ship at a foreign judicial sale should apply to the competent local authority in the country where the ship

⁵⁵ See Australia, p. 11, Italy, p. 8, Japan, p. 7.

⁵⁶ See China, p. 3, Canada, p. 10, Dominican Republic, p. 9, Norway, p. 12, Singapore, p. 8, Venezuela, p. 3.

⁵⁷ See Brazil, p. 6, Canada, p. 10, Denmark, p. 18, Nigeria, p. 9 (unless foreign law is pleaded), Norway, p. 12, South-Africa, p. 15, United States, p. 12.

⁵⁸ See Argentina, p. 10, Denmark, p. 18, Spain, p. 3, United States, p. 12.

⁵⁹ See Belgium, p. 14 (below 4.6) and Germany, p. 14.

⁶⁰ See Sweden, p. 9.

⁶¹ See Spain, p. 1.

⁶² Germany, p. 14

⁶³ Denmark, p. 18, United States, p. 12.

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was previously registered with appropriate documentation in evidence of the change of ownership in the ship as a result of the foreign judicial sale⁶⁴. In a considerable number of countries, the local court in the country of registration is the appropriate authority either to order changes in the ship's register or to decide disputes about changes in the registration of the ship. In a smaller but still significant group of countries, the responsibility to effect changes in the registration is entrusted to the registrar⁶⁵.

Question 4.6 If a foreign ship were sold in a foreign jurisdiction by way of judicial sale, will a register of ships in your jurisdiction enter that ship in its registration regardless of whether the previous foreign registration has been deleted?

27. It is clear from the responses to the Questionnaire that in most countries the deletion of the previous foreign registration of the ship after a judicial sale as proven by a deletion certificate of the previous registry is a precondition to a new registration of the ship elsewhere⁶⁶. Only a few countries allow the new registration of a vessel without a deletion certificate of the previous registry⁶⁷.

⁶⁴ See the responses of the MLA's of Argentina, p. 10, Australia, p. 12, Belgium, p. 13, Brazil, p. 6, Canada, p. 10, China, p. 3, Denmark, p. 18, Dominican Republic, p. 8, France, p. 4, Germany, p. 15, Italy, p. 9, Malta, p. 12, Nigeria, p. 9, Norway, p. 12, South-Africa, p. 16, Singapore, p. 8, Slovenia, p. 7, Spain, p. 3, Sweden, p. 10 and United States, p. 12.

⁶⁵ See the responses of the MLA's of Brazil, p. 6, China, p. 3, Denmark, p. 18, Dominican Republic, p. 8, France, p. 4, Germany, p. 15, Malta, p. 12, Norway, p. 12-13, South Africa, p. 16, Slovenia, p. 7, Spain, p. 3 (provided that MLM 1993 applies), Sweden, p. 10 and the United States, p. 12.

⁶⁶ See the responses of the MLA's of Belgium, p. 14, Canada, p. 10, China, p. 4, Denmark, p. 18, 16, France, p. 4, Italy, p. 9, Japan, p. 7, Malta, p. 12, Nigeria, p. 10, Norway, p. 13, South Africa, p. 16, Singapore, p. 9, Slovenia, p. 7 and Sweden, p. 10.

⁶⁷ See Argentina, p. 11, Brazil, p. 6, Dominican Republic, p. 8, United States, p. 13.

**THE CMI QUESTIONNAIRE
IN RESPECT OF RECOGNITION OF
FOREIGN JUDICIAL SALES OF SHIPS
COMMENTARY ON ANSWERS
TO THE 5TH GROUP OF QUESTIONS**

ANDREW ROBINSON¹

1. General comments

1.1 The 5th Group of questions in the Questionnaire considers three issues:

1.1.1 Two questions regarding case law where the judicial sale of ships has been challenged either in the jurisdiction where the ship has been sold, or in some foreign jurisdiction;

1.1.2 Three questions dealing with the provisions in Articles 11, 12.1 and 12.5 of the International Convention on Maritime Liens and Mortgages, 1993 [“the Convention”];

1.1.3 A final question asks the National Associations whether it is necessary to have a separate international instrument, such as a Convention, to deal specifically with issues arising out of the recognition of foreign judicial sales of ships.

1.2 The IWG received replies from 19 Maritime Law Associations. I have categorised the responses in the schedule attached hereto marked “A”, although it is important to note that in many cases the answers were qualified, particularly where jurisdictions were not a party to the Convention and their domestic legislation did not accord with the provisions set out in the Conventions.

1.3 For ease of reference I have included Articles 11 and 12 of the Convention as annexures “B” and “C” to this paper as many members may not be familiar with the provisions contained therein.

¹ Member of the International Working Group on the Recognition of Foreign Judicial Sales of Ship.

2. Comment on responses

2.1 Case Law

Questions 5.1 and 5.2 sought to elicit from the Associations examples of the judicial recognition, or otherwise, of the consequences of a judicial sale both where the judicial sale has been challenged in the jurisdiction where the sale is taking place, took place or is challenged in other jurisdictions.

Although it would appear that in many Associations an exhaustive review of the case law was not undertaken, our comment is that there are surprisingly few instances where the consequences of judicial sales have been challenged and in none of the examples provided was a single challenge successful.

2.2 Article 11 of the Convention

The third question related to the provisions of Article 11 of the Convention. This Article deals with the question of notice.

Our comment on the responses received suggest that there is a general view that notice should be given either to the relevant authority of the Flag State, or to the Consul of the Flag State. It was also felt that the method of such notice should be particularised (i.e. by some specific electronic means) and that the 30 day notice period could be substantially reduced so as not to unnecessarily delay the sale of the ship.

2.3 Article 12.1 of the Convention

Article 12.1 sets out the two conditions that must be met so that the registered mortgages, charges, liens and other encumbrances attached to a ship will be extinguished after the forced sale.

The general view was that the provisions were appropriate; some States wishing to restrict the notice requirement to that of the Consul of the Flag State only.

2.4 Article 12.5 of the Convention

Article 12.5 deals with the issue of the Certificate by the Court conducting the judicial sale and the deregistration and registration of the sold ship. Again there was a general view that the provisions in that Article were appropriate.

2.5 Separate international instrument

Finally, the IWG asked the question whether it was necessary to have a separate international instrument to deal with issues regarding the recognition of foreign judicial sales of ships.

There was no consensus on this issue with approximately half of the

Associations supporting the notion that there should be some form of international instrument dealing with the question of judicial sales and their recognition.

Some Associations regarded the Convention as being a failure given the lack of support that the Convention has received. Some view the Convention as being adequate, whilst others believe it is only partly adequate and would benefit from a suitably constructed Protocol. Other Associations believe that a completely separate instrument would be useful.

3. Conclusion

There appears to be a general consensus that the current provisions contained in the Convention are not altogether adequate. Whilst Associations who were not parties to the Convention expressed satisfaction with their own domestic legislative provisions dealing with judicial sales (whether or not they were more or less in line with the provisions of Articles 11 and 12 of the Convention) my concluding comment would be that the wide variety of different approaches to judicial sales and their consequences would suggest that there is a need for an international instrument that would attract the support of a wider range of States - especially those that do not support the Convention given the content of other provisions of that Convention.

Recognition of foreign judicial sales of ships

ANNEX "A"

QUESTIONNAIRE ON JUDICIAL SALE

QUESTION 5

in respect of Recognition of Foreign Judicial Sales of Ships

COUNTRY	QUESTION 5.1	QUESTION 5.2	QUESTION 5.3
	Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale and that sale has been challenged by the previous ship-owner or another interested person in a foreign jurisdiction? If yes, please list the cases and highlight the issues involved in detail.	Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale in a foreign jurisdiction and that sale has been challenged by the previous ship-owner or another interested person in your jurisdiction? If yes, please list the cases and highlight the issues involved in detail.	Article 11 of the International Convention on Maritime Liens and Mortgages 1993 provides that notice of a forced sale must be given to various parties. Do you think that those provisions are appropriate and should they be accepted as the basic requirements for recognition of a foreign judicial sale of ship?
Argentina	No records	Yes – challenges defeated	Limited notice available
Belgium	Not aware	Not aware	No comment
Brazil	Further research needed	Yes – challenge defeated	Yes
Canada	No	No	Qualified. Yes
China	Yes – judicial sale accepted	Yes – challenge failed	Yes
Denmark	No	Yes – challenge failed	Yes – requirements minimum
Dominica	No	No	Yes – minimum requirement
France	No	No	Yes
Germany	No	No	Yes
Italy	No	No	Yes

The CMI Questionnaire. Commentary on answers to the 5th group, by Andrew Robinson

ANNEX "A"

COUNTRY	QUESTION 5.1 Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale and that sale has been challenged by the previous ship-owner or another interested person in a foreign jurisdiction? If yes, please list the cases and highlight the issues involved in detail.	QUESTION 5.2 Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale in a foreign jurisdiction and that sale has been challenged by the previous ship-owner or another interested person in your jurisdiction? If yes, please list the cases and highlight the issues involved in detail.	QUESTION 5.3 Article 11 of the International Convention on Maritime Liens and Mortgages 1993 provides that notice of a forced sale must be given to various parties. Do you think that those provisions are appropriate and should they be accepted as the basic requirements for recognition of a foreign judicial sale of ship?
Malta	No	No	Qualified. Yes
Nigeria	No	No	Qualified. Yes
Norway	No	No	Yes
Singapore	No	No	No
South Africa	Yes	Yes - challenge failed	Yes
Spain	No	No	Yes
Sweden			
USA	Yes	Under review	Under review
Venezuela	No	No	Qualified. Yes

Recognition of foreign judicial sales of ships

ANNEX "A"

**QUESTIONNAIRE ON JUDICIAL SALE
QUESTION 5**

in respect of Recognition of Foreign Judicial Sales of Ships

COUNTRY	QUESTION 5.4	QUESTION 5.5	QUESTION 5.6
	Article 12.1 of the International Convention on Maritime Liens and Mortgages 1993 sets down two conditions that must be satisfied so that the registered mortgages or charges, liens and other encumbrances attached to a ship shall be extinguished after its forced sale. Do you think that those provisions are appropriate and should also be followed in recognition of a foreign judicial sale of ship?	Article 12.5 of the International Convention on Maritime Liens and Mortgages 1993 regulates the issuance of a certificate by the court that conducted the sale and the deregistration and registration of the ship that has been sold. Do you think that those provisions are appropriate and should they be made of general application in recognition of a foreign judicial sale of ship?	Bearing in mind that the International Convention on Maritime Liens and Mortgages 1993 has come into force and that provisions concerning notice and the effects of forced sale are contained therein, is it still necessary and feasible to have a separate international instrument, such as a convention, to deal with issues regarding the recognition of foreign judicial sales of ships?
Argentina	Yes	Yes	No
Belgium	No view	Probably not	Possibly
Brazil	Yes	Yes	No
Canada	Yes and No	Yes	Yes
China	Yes	Yes	Yes
Denmark	Yes	Yes – more detail required	Yes
Dominica	Yes	Yes	Yes
France	Yes	Yes	Yes

ANNEX "A"

COUNTRY	QUESTION 5.4	QUESTION 5.5	QUESTION 5.6
	Article 12.1 of the International Convention on Maritime Liens and Mortgages 1993 sets down two conditions that must be satisfied so that the registered mortgages or charges, liens and other encumbrances attached to a ship shall be extinguished after its forced sale. Do you think that those provisions are appropriate and should also be followed in recognition of a foreign judicial sale of ship?	Article 12.5 of the International Convention on Maritime Liens and Mortgages 1993 regulates the issuance of a certificate by the court that conducted the sale and the deregistration and registration of the ship that has been sold. Do you think that those provisions are appropriate and should they be made of general application in recognition of a foreign judicial sale of ship?	Bearing in mind that the International Convention on Maritime Liens and Mortgages 1993 has come into force and that provisions concerning notice and the effects of forced sale are contained therein, is it still necessary and feasible to have a separate international instrument, such as a convention, to deal with issues regarding the recognition of foreign judicial sales of ships?
Germany	Yes	Yes	No support CMLM
Italy	Yes	Yes	Wait outcome of IWG Report
Malta	Qualified. Yes	Qualified. Yes	No – amend CMLM
Nigeria	Qualified. Yes	Qualified. Yes	No – amend CMLM
Norway	Qualified. Yes	Yes	No
Singapore	No	Yes	Yes
South Africa	Yes	Yes	Yes
Spain	Yes	Yes	No – amend CMLM
Sweden			
USA	Under review	Under review	Under review
Venezuela	Yes	Yes	Yes

ANNEX “B”**1. Article 11 – Notice of forced sale**

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

- (a) the authority in charge of the register in the State of registration;
- (b) the holders of registered mortgages, “hypothèques” or charges which have not been issued to bearer;
- (c) all holders of registered mortgages, “hypothèques” or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and
- (d) the registered owner of the vessel.

2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:

- (a) the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or
- (b) if the time and place of the forced sale cannot be determine with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.

3. The notice specified in paragraph 2 of this article shall be in writing and either given buy registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

ANNEX “C”**2. Article 12 – Effects of forced sale**

1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, “hypothèques” or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:

- (a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; and
- (b) the sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.

2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1(a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

3. A State Party may provide in its law that in the event of the forced sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sales, before all other claims secured by a maritime lien on the vessel.

4. If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.

5. When a vessel registered in a State party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, “hypothèques” or charges, except those assumed by the

Recognition of foreign judicial sales of ships

purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1(a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, “hypothèques” or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

A BRIEF SUMMARY OF THE SESSION ON RECOGNITION OF FOREIGN JUDICIAL SALES OF SHIPS

JONATHAN LUX¹

Thank you ladies and gentleman for your contributions and thank you to the speakers.

To try and summarise the matters discussed this afternoon is something of a poisoned chalice. We covered five sets of questions relating to the judicial sales of ships i.e.:

1. The concept;
2. The key procedural elements;
3. The effects;
4. Recognition of the legal effects; and
5. Whether there should be a new international instrument on the recognition of foreign judicial sales of ships.

There was a great diversity of views expressed by the 23 NMA's who responded to the Questionnaire, although there was a fair measure of agreement on the key essentials. The very starting point is difficult: the Convention on Maritime Liens and Mortgages 1993 (the 1993 Convention) talks of forced sales whereas we are now discussing judicial sales. The question raised by Canada is quite correct, and the same question would arise in England - i.e. if an *in personam* judgment is obtained and the debtor has a vessel within the jurisdiction, application could be made to sell the ship by way of enforcement. Surely, it would not have been intended that this is within the scope of the 'judicial sales' we are discussing.

There is no doubt that there have been problems over the years and there certainly used to be (if not now) problems associated with Turkey. For example, in one case involving Turkish owners and a Turkish flagged vessel, there was a judicial sale in Denmark.

The applicant (a Turkish bunker supplier whose supply to the vessel predated the judicial sale) arrested the vessel in South Africa.

¹ ?????????

Recognition of foreign judicial sales of ships

The South African Judge held there was no merit in any of the applicant's submissions and went onto quote from someone who is well known in CMI circles – Professor John Hare. The Judge said:

“No clearer reason for recognising the title obtained by the buyer of the ship sold in execution can be given than that stated by Hewson J. in *The Acrux* (1962) 1LLR 405 quoted by John Hare in *Shipping Law and Admiralty Jurisdiction in South Africa* at page 111:

“Were such a clean title as given by this Court to be challenged or disturbed, the innocent purchaser would be greatly prejudiced. Not only that, but as a general proposition the maritime interest of the world would suffer. Were it to become established, contrary to general maritime law, that a proper sale of a ship by a competent Court did not give a clean title, those whose business it is to make advances of money in their various ways to enable ships to pursue their lawful occasions would be prejudiced in all cases where it became necessary to sell the ship under proper process of any competent Court. It would be prejudiced for this reason, that no innocent purchaser would be prepared to pay the full market price for the ship, and the resultant fund, if the ship were sold, would be minimised and not represent her true value.” ”

In summary, its of enormous practical importance that the purchaser be able to obtain a certificate of deletion from the previous registry and thereby be able to register the vessel in a new registry of his choice.

Those NMA's who feel that no new international instrument is required appear to rely on the fact that the 1993 Convention covers the ground in articles 11 and 12. However, only a restricted number of countries have ratified the 1993 Convention and quite a number of countries have substantial objections to that Convention. Therefore, in effect, this is really an additional justification for a new self-contained convention dealing expressly with the recognition of foreign judicial sales. This should be much less controversial than the 1993 Convention and therefore much more widely acceptable.

Ladies and gentlemen, this is a work in progress and we request your support to continue this work.

Comité Maritime International

QUESTIONNAIRE

in respect of Recognition of Foreign Judicial Sales of Ships

**SYNOPSIS OF THE REPLIES
FROM THE MARITIME LAW ASSOCIATIONS OF**

**ARGENTINA, AUSTRALIA, BELGIUM, BRAZIL, CANADA,
CHINA, CROATIA, DENMARK, DOMINICAN REPUBLIC,
FRANCE, GERMANY, ITALY, JAPAN, MALTA, NIGERIA,
NORWAY, SINGAPORE, SLOVENIJA, SOUTH AFRICA, SPAIN,
SWEDEN, UNITED STATES OF AMERICA, VENEZUELA**

PRELIMINARY COMMENTS

Belgium

The Method used:

This response refers to the questions raised in the questionnaire submitted by the CMI.

Any reference to his is to be understood to include one to her and visa /versa.

The relevant international conventions applicable in Belgium:

1926 Liens and Mortgages Convention (International Convention for unification of certain rules relating to maritime liens and mortgages).

1952 Arrest Convention (International Convention for unification of certain rules relating to the arrest of seagoing ships, Brussels, 10.05.1952).

1968 Brussels convention on Jurisdiction,

1988 Lugano convention on Jurisdiction

EU Regulation 44/2001 on Jurisdiction.

Are **not** applicable in Belgium:

1976 Liens and Mortgages Convention (International Convention for unification of certain rules relating to maritime liens and mortgages, Brussels, 27.05.1967).

1993 Liens and Mortgages Convention, Geneva, 06.05.1993.

New Maritime Code in the making:

A New Maritime Code is being written at this very moment and quit some of the provisions which are referred to in the present answers will change under that New Maritime Code. For now the Belgium Maritime Law Association is not at liberty to disclose anything in respect of this New Maritime Code.

Recognition of foreign judicial sales of ships

Mortgages versus Hypotheques:

Belgium does recognize foreign mortgages but has no such concept in its Statute law.

Securisation of a claim such as a Bank loan is obtained by inscribing an Hypotheek into the ships registry. Commonly the French word Hypotheque is translated into English as Mortgage.

United States of America

In the United States, a vessel may be seized and judicially sold under federal law and also under the laws of many states. A number of different procedures and fora exist for judicially selling a vessel, for example, by order of a federal district court under maritime law, a federal district court on the basis of a civil or criminal forfeiture, a bankruptcy court, and a state court. The procedure and fora utilized will determine the nature and effect of the sale. The rules governing the seizure and sale of vessels under federal maritime law appear principally in Rules B, C, and E of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (the “Supplemental Admiralty Rules”), the Ship Mortgage Act, 46 U.S.C. §§ 31321-30, and the Maritime Lien Act, 46 U.S.C. §§ 31341-43. The answers to this Questionnaire will address sales pursuant to federal maritime law and not the seizure or sale of vessels under state law, which will necessarily vary with the laws of the different states. For a discussion of the seizure of vessels under state law, please see Joshua S. Force, *State Attachment and Garnishment Procedures in Maritime Matters: A Primer*, 20 U.S.F. MAR. L.J. 1 (2007-08), a copy of which is attached.

1. The concept of judicial sales of ships

Note: The IWG is aware that in many jurisdictions judicial sale is termed differently, such as forced sale or court sale, etc. and that judicial sales of ships may be initiated or conducted for various purposes, such as to enforce a maritime lien or mortgage on a ship, to enforce an effective judgment or arbitral award, or to preserve a maritime claim taking the ship as a wasting asset. It is hoped that your answers and comments to the questions within this group will help to produce a proper definition of judicial sales of ships for the purpose of this project and/or the future international instrument.

1.1. Is the term judicial sale or judicial sale of ship (or a similar term such as forced sale) defined in the law of your jurisdiction? If yes, please provide the definition. If not, please explain what kind of sale of ship equates to a judicial sale of ship by which all liens or charges or encumbrances attached to the ship before the sale will be extinguished?

Argentina

The judicial sale of a ship is dealt with in the Navigation Law (Section 593). However, in the Argentinean legal system there is no definition for either the “judicial sale” or “judicial sale of ship” terms.

Pursuant to Section 484(a) of the Argentinean Navigation Law, preferential or privileged credits shall be extinguished after a period of one year unless the ship is arrested before the expiry of said period.

According to said section 484, all preferential or privileged credits attached to a ship shall also be extinguished:

- (i) by the judicial sale of the ship as from the deposit of the price with the competent court (section 484, b); or,
- (ii) within three months from the private ship sale to be counted as from the date of the submission of the title of ownership by the new owner to the National Registrar of Ships, provided that the private sale has been made known of by publication in the Official Gazette for three days. [Section 484(c)]

Australia

The term “judicial sale” or “judicial sale of a ship” is not defined in Australian legislation. However, the procedure for the sale of ships by the Admiralty Marshal which extinguishes all liens, charges or encumbrances and equates to a judicial sale of a ship is set out in the Admiralty Rules 1988 (Cth) (‘the Admiralty Rules’) in particular, Part X which deals with the valuation and sale of a ship and Part XI which deals with parties who are entitled to bring applications to determine priorities.

Belgium

a) Belgium adhered to the 1926 “*Convention internationale pour l’unification de certaines règles relatives aux privilèges et hypothèques maritimes*”, Brussels, 0.04.1926 (translated as: International Convention for unification of certain rules relating to maritime liens and mortgages).

Art. 9 of this Convention determines that: “*The liens cease to exist **apart from the other cases provided for by national laws, ...***”

Belgian Statute Law has provided in art. 37.3 of the Maritime Code as follows:

“*Les privilèges et hypothèques s’éteignent:*

...
 3. *par la vente forcée du navire grevé;*
 ...”

Which in translation gives the following:

“Liens and mortgages cease to exist:

...
 3. by the forced sale of the vessel charged;
 ...”

b) Whereas there is no statutory definition of “*forced sale*” it is generally accepted to be meant *the sale at the initiative of a third party, usually a creditor, irrespective of the agreement of the owner of that good.*

Recognition of foreign judicial sales of ships

The forced sale of (assets such as) a ship is *a right of execution with the purpose of realising the claims of a creditor by way of means of power provided for by law*.

The “*forced sales*” referred to in the Maritime Code are sales under the control of the judiciary. The statutory provisions on the forced sale of vessels are embedded in the Judicial Code under Chapter V of Part 5: Judicial sale of seagoing vessels and interior waterway vessels (art. 1546 Judicial Code Juncto 1559 Judicial Code). The Judicial Code determines the procedural rules to follow. It also has some provisions which regard material rights against the vessel. For the sake of completeness it should also be referred to the wreck removal provisions of Belgian law which allow the authorities to arrest any vessel which caused damage to that authority and ultimately sell that vessel if no limitation funds are set up or no guarantees are given, in short when the vessel is abandoned. The Belgian Maritime Law Association is presuming that this is not the purpose of present questionnaire and it is consequently not pursuing this aspect of “*forced sales*” further¹.

Brazil

The judicial sale of a ship is described, rather than defined, in articles 477 to 483 of the Brazilian Commercial Code, with special rules and requirements for previous detention of the vessel. However, the existing rules for judicial sales are common to all kinds of assets, as set out in the Brazilian Civil Procedure Code, namely: rules on the attachment of a ship (art. 679), and, as to the sale, the adjudication (art. 685), the private sale (art. 685-C) and then the sale in public auction (arts. 686 to 707).

Canada

There is no formal definition of “judicial sale” in Canadian federal law, but an equivalent process does exist. The Federal Court of Appeal in *Osborne Osborn Refrigeration Sales & Service Inc. v. The Ship «Atlantean I» (The)* (1982), 7 D.L.R. (4th) 395, 52 N.R. 10 (Fed. C.A.) modifying (1980) 100 D.L.R. (3rd) 11 (F.C.T.D.) described the effect of a court ordered sale as follows:

“When a ship is sold by the court in *in rem* proceedings, the buyer acquires complete title; all the creditors who up to that time had been entitled to sue the ship and cause it to be seized lose their rights to do so, and henceforth are only entitled to participate, in accordance with the ranking of their respective debts, in the distribution of the ship’s selling price. On the other hand, anyone who after the sale acquires a debt on the

¹ Those having additional interest are invited to look at the law of 11.04.1989 regarding accidents of navigation, art. 12-18 Belgian State’s Journal of 06.10.1989, p. 1750 and following as adapted.

basis of which they can sue the ship or its owners cannot obtain payment of that debt from the proceeds of sale: their right must be exercised against the ship itself and its new owners.”

The Court has the discretion to make orders on any terms and conditions that it considers just in the particular circumstances of the case.

China

The term “judicial sale” is used in the PRC laws in absence of its straight definition. Article 29 of the PRC Maritime Special Procedure Code (hereinafter referred to as MSPC) indicates that an application can be made to the maritime court for sale of the ship by auction. Article 29 of MSPC provides that, “*Where the person against whom a claim is made fails to provide security on the expiry of the time limit for arrest of a ship, and it is not appropriate to keep the ship under arrest, the maritime claimant, having brought an action or applied for arbitration, may apply for auction of the ship to the maritime court ordering the arrest of the ship*” These should be regarded as judicial sales of ships in the PRC, which arise the effect that all liens or charges or encumbrances attached to the ship prior to sale will be extinguished.

Croatia

Although Croatian law does use those terms, it does not provide their definitions. From the context of the relevant provisions it follows that judicial sales of ships are sales carried out by commercial courts in the so-called forced execution procedure, whereby ships are evaluated, sold by public auction (or direct bargain) and the proceeds distributed amongst the qualifying creditors.

Denmark

The term “judicial sale” (in Danish: *tvangsauktion*) is not defined. It is a form of regulated forced auction sale whereby an asset is sold at the initiative of the owner’s creditors, without necessary consent from the owner. The purpose is of course to obtain as much coverage as possible for the creditors. The sale price is used for coverage of the entitled creditors in the order of priority of the encumbrances over the asset. Encumbrances that are not covered by the sale price are either extinguished or taken over by the buyer. Judicial sales of ships are primarily regulated in Chapters 49 and 50 of the Administration of Justice Act (in Danish: *retsplejeloven*) (hereinafter referred to as the “AJA”). Chapter 49 applies generally to all judicial sales, including real property, whereas Chapter 50 only applies to judicial sales of movables/personal property. With respect to the rules on judicial sales all ships are considered movables/personal property, subject to Chapter 50 of the AJA. Furthermore, the rules are different depending on whether or not the ship concerned is registrable or not under Danish law.

Registration and rights over ships and maritime liens are generally regulated by the Danish Merchant Shipping Act (in Danish: *søloven*) (hereinafter referred to as the “DMA”) which, inter alia, follows the rules set out in the 1967 Brussels Convention on Maritime Liens and Mortgages (the “Convention”).

Dominican Republic

Sale of a ship through public auction is the equivalent term.

France

Under French Law, there is no legal definition of the judicial sale of ship. But such a sale is provided for by French Law by special and detailed provisions (Law n° 67-5, January 3rd, 1967, article 70 and Decree n° 67-967, October 27th, 1967, articles 31 to 58). This sale is similar as regards the conditions and the legal consequences to the judicial sale applied to a real estate

Germany

German law knows the Judicial Sale, but there is no statutory definition of the term as such. It is a sale by which a judgment or other title can be enforced against the owner of a vessel. § 870a of the *Zivilprozeßordnung* (Statute on Civil Procedure; hereinafter “ZPO”) stipulates that enforcement of a title against registered vessels and registered ship-newbuildings has to be effected in accordance with the *Gesetz über die Zwangsversteigerung und die Zwangsverwaltung*, (the Statute Concerning the Forced Sale and Forced Administration; hereinafter “ZVG”). It is conducted in accordance with the strict procedure of the ZVG.

Italy

The term used in both the code of civil procedure (CCP) (article 483 et seq.) and the code of navigation (CN) (article 649 et seq.) is “forced expropriation” (*espropriazione forzata*). Both codes regulate forced expropriation, without yet providing a definition.

Japan

No, Japanese law does not have any particular provision to define “judicial sale” or “forced sale” of ships. Japanese law just says that enforcement proceedings against ships shall be made by way of “forced sale (*kyosei keibai*).” The procedure of “forced sale” is set out in the *Civil Enforcement Law (Minji Shikko Ho: Law No. 4 of 1979)*.

Malta

Our Code of Organization and Civil Procedure regulates the procedure for judicial sales in general without, however, providing for a definition thereof. The notion of “judicial sale of a ship” under Maltese law will result from the answers to this questionnaire.

Nigeria

The term “judicial sale of ship” is not defined under our law. However, the procedure is recognised by the Admiralty Jurisdiction Procedure Rules 1993 [AJPR] made pursuant to the Admiralty Jurisdiction Act 1991. Order 14 Rule 1 of AJPR provides:

“1[1] The court may, on application by a party and either before or after judgement in a proceeding, order that a ship or other property that is under arrest in the proceeding:

[a] be valued;

[b] be valued and sold; or

[c] be sold without valuation.”

Also, where the sale is made to enforce a judgment *in personam* in a non-admiralty suit, the sale equates to a judicial sale.

Norway

The term “forced sale”, which is the term used in Norwegian legislation, is not defined. In order to achieve a forced sale of a vessel, a creditor will have to apply to the court of enforcement. The application must demonstrate that the creditor has ground for enforcement (meaning a creditor which has an enforceable basis for execution) and that the claim is due. The court shall present the application to the owner of the vessel, who shall be given time to comment on the application. The court will decide whether the application is successful and the vessel can be sold after the owner has been given time to comment upon the application. A sale can be conducted either by an assistant of the court or by forced auction. A sale may only take place if the proceeds will give full satisfaction for all parties that have higher ranking rights in the vessel than the creditor demanding forced sale.

Singapore

The term “judicial sale” or “judicial sale of ship” is not defined under Singapore law. The phrase “judicial sale” is commonly used in Singapore to refer to a sale of a ship that is ordered by the Singapore Court. An order by the Singapore Court for the sale of a ship may occur in two principal ways. First, upon judgment being given in favour of the Claimant in proceedings where the claim/proceedings were the basis on which the ship was arrested and where the ship is still under arrest at the time judgment is given. This occurs more frequently where proceedings are commenced, the ship arrested, and the shipowner does not contest the claim. Upon giving judgment to the Claimant in default of contest by the shipowner, the Court is empowered to order the sale of the ship. Secondly, when a ship is under arrest, the Singapore Court may be persuaded by a party who has an interest in the ship to order the sale of the ship notwithstanding the fact that the claim/proceedings in which the ship was arrested is still to be determined or adjudicated by the Court. Such sales are also

referred to as “sale pendente lite” or sale pending litigation. The ground on which the Singapore Court will make such an order for sale pending litigation is it being satisfied that the vessel is “perishable”, that is to say a deteriorating or wasting asset. In both situations where a sale of ship is ordered, the sale proceeds will usually be ordered by the Court to be paid into Court pending determination of priority of maritime claims against the ship and payment out of the sale proceeds of the ship will be in accordance with the order of priorities determined by the Court. Under Singapore law, purchasers of ships from judicial sale are regarded to acquire the ship with “clean title”, that is to say, free of all liens, charges or encumbrances attached to the ship prior to the judicial sale. Singapore law regards such liens, charges or encumbrances to be transferred to the sale proceeds of the ship sold judicially.

Slovenija

In our jurisdiction judicial sale is defined only in respect of the sale of ship in the enforcement proceeding on the basis of a final court decision.

South Africa

In South African law the judicial sale of ships is governed by the provisions of the Admiralty Jurisdiction Regulation Act 105 of 1983 (“the Act”), as amended and in terms of the Rules regulating the conduct of the admiralty proceedings of the several Provincial and Local Divisions of the Supreme Court of South Africa (“The admiralty rules”). Neither the Act nor the admiralty rules define a judicial sale. However the provisions of Section 9 of the Act state:

“Sale of arrested property

- (1) A court may in the exercise of its admiralty jurisdiction at any time order that any property which has been arrested in terms of this Act be sold;
- (2) The proceeds of any property so sold shall constitute a Fund to be held in court or to be otherwise dealt with, as may be provided by the Rules or by any other court;
- (3) Any sale in terms of any Order of Court shall not be subject to any mortgage, lien, hypothecation, or any other charge of any nature whatsoever.”

Admiralty Rule 21(4) echoes these provisions by stating that:

“In terms of Section 9 of the Act the court may, at the instance of any interested party, order that arrested or attached property be sold on such terms and in such manner as the court may deem fit ...”

Spain

No. Under Spanish law there are general rules relating to the realization of assets. There are still in force the provisions for judicial sale of ships provided

by the Ship's Mortgage Act of 1893, but such provisions apply to Spanish-flagged ships only. For foreign vessels, other specific rules provided by Articles 579-580 of the Commercial Code were superseded by the Spanish adoption of the MLM Convention of 1993.

Sweden

No, there is no such specific definition. The kind of sale of ships that equates to a judicial sale is the sale conducted in accordance with the Code on Execution of 1981 (hereinafter referred to as the "CoE"). That is to say a sale that is conducted under the control of the Enforcement Authority ("Kronofogden" – hereinafter referred to as the "Authority"). This kind of sale is named *execution sale* (in Sw. "*exekutiv försäljning*") in the CoE.

United States of America

Neither the Supplemental Admiralty Rules nor other applicable laws define the terms "judicial sale" or "judicial sale of ships" per se. Nevertheless, under U.S. law, a vessel seized pursuant to Supplemental Admiralty Rule C, which constitutes an action *in rem*, may be sold by judicial sale, and that sale will extinguish all liens attached to the vessel. Supplemental Admiralty Rule E contains the procedural rules for the sale of vessels seized under Rule C and provides in part:

All sales of property shall be made by the [United States] marshal or a deputy marshal, or by other person or organization having the warrant, or by any other person assigned by the court where the marshal or other person or organization having the warrant is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.

SUPP. ADM. R. E (9)(b).

Venezuela

No. In Venezuela, judicial sale is regulated by the Civil Procedure Code and proceeds after the court decision or arbitral award has been a final with a *res judicata* effect. The purchaser of the vessel subject to judicial sale in accordance with article 572 of the Civil Procedure Code, become a legitimate buyer, so the vessel is purchased free from all liens, whether maritime liens and mortgages.

1.2 For what purpose may a judicial sale of ship be initiated and conducted in your jurisdiction?

Argentina

Mainly for the execution of a final and unappealable judgement against the

owner of the vessel or in the event that there is a lien attached to the vessel. It is possible to obtain the judicial sale of an arrested ship where there is a risk of loss or substantial depreciation of her value.

Australia

In Australia a judicial sale may be initiated and conducted by a party for the purpose of enforcing a maritime lien or statutory charge. The Courts have a wide general discretion in determining either before or after a final judgment has been obtained whether a ship or other property under arrest should be sold². Generally an order for the valuation and sale of a ship prior to judgment will only be sought where there is a default of acknowledgment of service or defence. The Admiralty Act (Cth) 1988 ('the Act') also gives the Court power, either on its own motion or by application, to sell a ship or property which is deteriorating in value at any stage of the proceeding³.

Belgium

The judicial forced sale of an asset, also of a ship, is possible only at the request of someone holding an *enforceable title such as a* judgment or a notarial deed. This is to be a title against either the owner or, if the debtor under the title is not the owner of the vessel, he must have a lien against the vessel or the vessel must stand guarantee for the debt. Whereas it was initially contested that maritime claims as per the 1952 Arrest Convention may also result in the vessel in respect of which the claim arose to be sold irrespective if the vessel is owned by the debtor of that maritime claim that is now accepted.

Brazil

For enforcement of a judgment against the owners of the vessel, for a lien attached to the ship, duly registered with the Registrar of Vessels of the Admiralty Court and so recognized in a court decision, for non-reimbursement of expenses incurred by the Navy in the salvage of a vessel and theoretically (uncommon event in Brazilian courts) in the cases of release by abandonment of vessel, appurtenances and freight to creditors.

Canada

A judicial sale of a ship can be carried out:

1. to satisfy a Canadian judgment or claim of a debt, whether secured or otherwise, when the judgment debtor refuses or is unable to do so;
2. to satisfy a Canadian judgment or right of forfeiture or partial forfeiture in favour of a government authority ("the Crown");

² *Marinis Ship Suppliers (Pty) Ltd v Ship Ionian Mariner* (1995) 59 FCR 245 per Ryan J.

³ Rule 69(5) of the Admiralty Rules 1988 (Cth)

3. to satisfy a foreign judgment or final arbitration award that has been recognized in Canada;

4. where the owner has abandoned the vessel and one or several claimants have initiated legal proceedings *in rem* against the vessel.

5. where the ship is owned by more than one party, and the owners among themselves who no longer wish to remain in common ownership cannot agree on the division of value;

6. in the course of litigation if the vessel has been arrested and its condition and commercial value is deteriorating (sale *pendente lite*) or a third party, without any proprietary interest, such as the port, is involuntarily assuming preservation costs.

China

The judicial sale of ship is initiated and conducted for the purpose of obtaining security for the enforcement of prospective judgment or arbitration award or for the purpose of enforcing maritime liens, and sometimes for the purpose of executing a judgment or arbitration award.

Croatia

A judicial sale of a ship may be initiated and conducted for the purpose of enforcing a monetary claim in case: (a) the debtor is the owner of the ship; and/or (b) the claim is secured by a maritime lien or mortgage on the ship.

Denmark

Judicial sales are handled by the Danish bailiff's court (in Danish: *fogedretten*). The bailiff's court will never initiate a judicial sale at its own initiative. This can only be initiated by formal request from a private creditor/mortgagee which has levied attachment, a public/state authority which has levied distress/dstraint, or an insolvency estate. The purpose of a judicial sale is to obtain as much coverage as possible for the creditors that have a secured interest in the ship. The sale price is used for coverage of the secured creditors in the order of priority of encumbrances. Encumbrances that are not covered by the sale price are extinguished.

Dominican Republic

To collect monies due by the ship owner.

France

A judicial sale may be initiated and conducted, as one of the ways, in order to enforce a settlement, a judicial or an arbitrators decision recognising a claim against the shipowner.

Germany

The sole purpose of a judicial sale is the enforcement of an executory title against the owner of the vessel. This executory title may either be a judgement

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or may, for example, consist of a notarised deed by which the owner submits to the direct enforcement against the vessel. Such submission under direct enforcement is usually declared in conjunction with the granting of a German ship's mortgage, thereby enabling the mortgagee to apply for a judicial sale without having first to apply to a court for a declaration of enforceability.

Italy

Judicial sales of ships may be either civil or criminal. In the former case, the purpose is to satisfy creditors with the proceeds of the sale. In the latter case, a judicial sale may serve different purposes, such as the security for claims of the State (*sequestro conservativo*), the need to prevent the commission of other and additional crimes (e.g. contraband) (*sequestro preventivo*) or the need to preserve evidence required in criminal proceedings (*sequestro probatorio*).

Japan

Judicial sale of ships may be initiated for the purpose of enforcing the following sorts of claim:

(a) claims based on, (i) a final and conclusive judgment, (ii) a judgment with effect of temporal enforcement, (iii) agreements which have the same effect as a conclusive judgment (for instance a settlement before the court, (iv) an agreement certified by the notary public providing for payment of money or its equivalent, including a debtor's covenant to accept the enforced sale of his asset immediately upon receipt of a claimant's demand; and

(b) claims relating to (i) mortgages, (ii) maritime liens, other liens, including possessory liens, or any other pledge or charge.

The reference to "judgment" in (a) above includes judgments recognizing or enforcing arbitral awards or foreign judgments.

Malta

A judicial sale is usually initiated for the satisfaction of a creditor's claim, such as that of a registered mortgagee or a creditor who holds an executive title.

Nigeria

A judicial sale may be initiated and conducted:

1. For the purpose of enforcing a judgment *in rem*;
2. To prevent a vessel which is under arrest from continuing to deteriorate;
3. As a means of enforcement of a judgment *in personam* in a non-admiralty action.

Norway

A forced sale may be initiated and conducted to ensure payment to a creditor

that has an enforceable basis for execution, i.e. an award or a registered mortgage, provided that the claim is due for payment.

Singapore

See 1.1.

Slovenija

The ship can be sold in the proceeding on the basis of a final court decision for the following claims:

1. against damage caused by the collision of the ship being subjected to the enforcement process, or against damage caused in some other way;
2. against death or physical injury caused by the ship being subjected to the enforcement process;
3. against salvage or a salvage agreement including special compensation for salvaging activities in cases when there a risk of a ship or its cargo polluting the environment;
4. arising from an agreement relating to the use or chartering of a ship and from an agreement relating to the carriage of goods or persons on a ship, irrespective of whether such agreements are included in the contract of exploitation of a ship being subjected to the enforcement process;
5. arising from general average;
6. arising from pilotage and towage;
7. arising from the supply of a ship for the maintenance and use of the ship being subjected to the enforcement process;
8. arising from construction, conversion, repair, equipping and docking of the ship being subjected to the enforcement process;
9. arising from the rights of the crew to salaries, including the costs of repatriation of seamen and social security;
10. against the expenses incurred in connection with the ship by its captain, shipper, client or agent of the vessel and/or owner of the ship or shipmaster;
11. arising from the insurance premiums that the owner or charterer of the ship subject to the execution process has with that ship;
12. arising from damage, or risk of causing damage, due to the pollution of the sea or the shore; measures for the prevention, reduction or removal of such damage; compensation for damage; costs of justified measures already carried out or to be carried out to remedy the damage caused; damages suffered or likely to be suffered by third parties due to pollution; damages, costs or loss of a similar nature specified in this point;
13. arising from the costs or expenditure relating to salvaging, removal, preservation, destruction or measures necessary for ensuring the harmlessness of sunken ships, wrecks, ships that have run aground or that were abandoned, including all the equipment on board such ships, and the

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costs and expenditure for the preservation of an abandoned ship and maintenance of its crew;

14. arising from the loss of or damage to the goods (including luggage) carried on a ship which is subjected to the execution process;

15. arising from port fees;

16. arising from disputes regarding ownership or possession of a ship, disputes between co-owners regarding the use and earnings of the ship and disputes arising from contracts on the sale of a ship which is subjected to the execution process;

17. arising from maritime liens, mortgages or similar encumbrances of a ship which is the subject of the execution process.

South Africa

Where a ship has been arrested, either *in rem* or for the purposes of obtaining pre-judgment security, or where the ship is being attached to found and confirm the jurisdiction of a South African court, the party who has arrested or attached that ship, or any other claimant who has a claim against the ship or the owner of the ship or the demise charterer of that ship, may apply to court for the sale of the ship, the proceeds thereof to compromise a Fund against which claims can be lodged with a view to those claims being paid out in accordance with their ranking as set out in Section 11 of the Act.

Spain

The basic purpose is the satisfaction of all maritime liens and claims against the Owner of the ship.

Sweden

A judicial sale may be initiated for the satisfaction of a judgment for which the owner is personally liable with all his assets, or for a judgment for which he is only liable up to the value of the vessel.

United States of America

A vessel may be seized either to obtain jurisdiction and/or security for an *in personam* claim against the owner under Supplemental Admiralty Rule B or to enforce any maritime lien or whenever a statute provides for a maritime action *in rem* claim against the vessel under Supplemental Admiralty Rule C. Security may be obtained either for a judicial action in the United States or an arbitration in the United States or another country. Therefore, a seized vessel may be sold either to provide security for a claim against the owner, *in personam*, or for a claim against the vessel, *in rem*.

Venezuela

With the purpose to execute a judicial decision or arbitration award

1.3 *In what circumstances and on what conditions may a judicial sale of ship be initiated and conducted in your jurisdiction?*

Argentina

(a) As an action for enforcement. For the execution of an unappealable judgement delivered against a registered shipowner, the creditor can arrest any ship in the same ownership, without any restriction or condition.

(b) As an action for conservation. An arrested ship can also be auctioned by the court prior to the delivery of a final and unappealable judgment when there is a risk of loss or substantial depreciation of her value.

(c) As an action in personam within the limitation proceedings (Sections 561 to 577 of our Navigation Law). This is the case of the abandonment of a ship for the purpose of limiting the shipowner's liability upon condition that the shipowner file with the Court either the document proving that it has deposited the amount of the limitation fund or the title of ownership in the court bank. In addition, the shipowner will file a breakdown of its calculation of the limitation fund as well as the supporting evidences, the list of creditors detailing the amounts of their claims, their addresses, and information on any mortgage or encumbrances on the ship. 3

No action in rem is provided for in our legal system.

Australia

Pursuant to Rule 69(1) of the Admiralty Rules a Court may, on application by a party either before or after final judgment, order that a ship or other property under arrest be valued, be valued and sold or be sold without valuation. The application for the valuation or sale of a ship or property under arrest must be in accordance with the requisite form prescribed under the Admiralty Rules (Form 26). It must contain a personal undertaking by the solicitor for the applicant to pay, on demand, to the Admiralty Marshal an amount equal to the costs and expenses involved. The application will be heard in open Court by a Judge.

Belgium

The forced sale of (assets such as) a ship is a right of execution with the purpose of realising the claims of a creditor by way of means of power provided for by law. See 1.2. also.

Brazil

Please see answer to 1.2.

Canada

Where it has jurisdiction, the Federal Court's discretion governing the sale of arrested property is unfettered. A motion is made to the Federal Court to order

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the appraisal and sale of the property. This is usually done by one of the parties having a right in or claim against the vessel as set out in 1.2. The applicant must show that it has a claim *in rem* against the vessel and that it would be appropriate in the circumstances to sell the vessel in order to satisfy the claim of the applicant and possibly other claims. The court may consider selling the vessel during the litigation, prior to any judgment against the vessel or the ship owner. The court considers the following factors:

- the value of the vessel as compared with the value of the claim;
- where there is an arguable defence, that is, arguable issues of fact *and/or* law to be decided at trial;
- whether it is reasonable to assume that there must be a sale at some point, in view of the ship owner’s financial resources;
- whether there will be diminution in value of the vessel or of the sale price by the delay, including the costs of keeping guards on board, maintenance and port costs and the cost of insuring the vessel;
- whether the vessel will depreciate due to further delay;
- whether there is good reason for a sale prior to the trial.

The motion may even be made by a claimant who is not yet a party to the action, but who applies for the right to intervene and have the ship sold. While the Court has the power to order appraisals and sale by auction, there is no restriction on to the Court from ordering a private sale without advertisement. The Court’s approach is to favour the maximum amount of publicity possible to ensure that all possible claimants are advised of the sale and of the availability of a claims process, unless it can be shown that no interest would be served.

China

A party who had maritime claims and applied for arrest of the ship through the court can apply for auction of the ship after expiry of 30 days of the arrest provided that no security was provided by the ship interests to the arresting party and the ship is not suitable to be arrested any longer. In addition, a party possessed with a favourable judgment or arbitral award is also entitled to apply for enforcement by court auction of the ship.

Croatia

The mechanism of forced execution by judicial sale of ships can only be set in motion on the basis of a so-called “enforceable document” or a so-called “reliable document”. The term “enforceable document” includes documents such as: enforceable⁴ judgment of the Croatian court, or award of a Croatian

⁴ A court decision is enforceable if it has become final and if the term for voluntary fulfilment has expired.

arbitration, or enforceable judgment of a foreign court or a foreign arbitral award, which has been recognized by the Croatian court, or court settlement, or special agreement concluded before a notary public, containing debtor's express statement that in case of default the creditor may settle its claim directly by way of forced execution. This list shows that judicial sale cannot take place until the merits of the claim have been determined judicially or by some other official body, or until the debtor has given an express prior approval to such sale. The term "reliable document" includes documents such as: invoice, bill of exchange, cheque, excerpt from claimant's business records, etc. These documents are far from determining the claim on the merits, and the possibility to commence judicial sale on this basis is only the means to skip litigation and proceed directly to enforcement in case of uninterested or unwary debtors. On the other hand, a simple objection lodged by the debtor against the writ of execution in these cases will eliminate the execution proceedings and automatically bring the whole process into litigation.

Denmark

Enforcement of claims through a judicial sale of a ship contains two steps; firstly the levying of an attachment (in Danish: *udlæg*) on the ship (with or without the appointment of an administrator of the ship), and secondly the judicial sale (the forced auction sale). It is a requirement for a judicial sale of ship that the creditor has levied prior attachment on the ship. The attachment forms the basis for the creditor's request for a judicial sale of the ship, cf. the AJA, Section 538(1). The request for attachment may be sent to the bailiff's court at the same time as the request for the judicial sale. A creditor can only levy attachment on the ship if there is sufficient legal basis for it under Section 478 of the AJA are fulfilled. Section 478 contains an exhaustive list of situations in which a creditor is entitled to enforce his claim by levying attachment. With respect to judicial sales of ships the following situations represent the most common legal basis for levying attachment:

- judgments and decisions by courts or other authorities (whose decisions are enforceable by law)
- settlement agreements made before the above mentioned courts or other authorities
- written settlement agreements made out of court concerning debt which is due and payable provided it is expressly stated in the document that it may serve as basis for execution
- other types of written instruments of debt (in Danish: *gældsbreve*) provided it is expressly stated in the document that it may serve as basis for execution
- mortgage deeds (in Danish: *pantebreve*), owner's mortgage deeds (in Danish: *ejerpantebreve*) and letters of indemnity (in Danish:

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skadesløsbreve) - whether foreign or Danish - however, with respect to owner's mortgages and letters of indemnity only when the size and the maturity of the secured debt has clearly been acknowledged by the debtor, or is abundantly clear from the circumstances

- Bills of exchange
- claims on which a right of lien (in Danish: *udpantningsret*) is conferred by law
- situations in which the ship has been pledged (in Danish: *håndpantset*) to the creditor (possessory liens).

The creditor must prove to the bailiff's court that there is legal basis for his claim in at least one of these situations. If not, such basis must be established, e.g. by first obtaining judgment for the claim against the debtor through the ordinary courts, before attachment can be levied and the creditor can proceed with the process of judicial sale. Broadly speaking, a judgment is required in cases where the claimant is not secured by a registered mortgage or other documents which clearly show that the claim is acknowledged by the debtor. There is no opportunity under Danish law to obtain a judicial sale order *pendente lite*. With respect to judgments by courts etc., such may be enforced in Denmark regardless whether they are judgments against the ship or the debtor (personal judgments). Civil judgments by foreign courts and authorities as well as settlement agreements may also be enforced in Denmark and as such used for levying of attachment provided, firstly, that they are enforceable in the country of decision (or the law applicable to the decision) and, secondly, that they do not violate basic Danish principles, cf. the *ordre public* doctrine. Denmark is a party to the Brussels regulation on jurisdiction, recognition and enforcement of judgments in civil and commercial matters (Council Reg. (EC) 44/2001). With respect to mortgage deeds, such may be enforced in Denmark regardless of whether the deed is governed by Danish law and subject to the jurisdiction of Danish courts. Foreign mortgage deeds are also recognized as basis for levying attachment on ships.

Dominican Republic

It normally follows after an arrest of a vessel for collection of debts, whether or not preferred debts, and to execute an unpaid mortgage on her.

France

Any claimant against a shipowner has to prove an enforceable title against this one. There is a debate under French Law as to the nature of this enforceable title: must it be a judgment on the merits of the claim, that means an arbitration award or a judgment held by the competent court, being and provisionally enforceable on one hand, or, may it be only a provisional order or summary decision rendered by the judge of urgent matters, on the other hand? There is no final French judicial decision as to this question. One can

say that in case of arbitration clause provided for by a contract between the creditor and the shipowner, the first one can obtain a summary decision, when the claim is not actually disputable, and enforce it by a judicial sale, because a referee decision is, under French Law, an enforceable title.

Germany

The judicial sale may be initiated at any time when

- (1) the person applying for the sale has a claim confirmed by a valid executory title for this claim against the debtor and
- (2) the debtor has failed to satisfy this claim when it was due and
- (3) the debtor is the owner of the vessel in question or the title against the debtor extends against the owner (§ 164 ZVG); and
- (4) in case of a ship-new-building: only once it has been registered in a (German) new-building registry.

Whether a title against a third party extends also against the owner is governed by the relevant rules of the *Handelsgesetzbuch* (the Commercial Code, hereinafter “HGB”). These are in particular maritime liens (§ 754 HGB), which are limited to

- crews wages
- public dues incl. harbour and pilot fees
- claims for damage to persons or property if caused by the use of the vessel, as long as such claims re based solely on tort
- Salvage costs; contributions of the vessel and cargo to a general average claim; costs of wreck removal
- Claims of the social insurance incl. unemployment insurance against the owner.

The enforcement of a maritime lien requires a judgement to the effect that enforcement proceedings must be tolerated (“Duldung der Zwangsvollstreckung”). This judgement may be rendered against the owners, against the bareboat charterer (owners pro hac vice) or against the master of the vessel.

Italy

The general rule applicable to forced expropriation of assets of the debtor, that is applicable also to ships, is that the person that intends to obtain the judicial sale must hold an enforceable title, such being either a judgment, a decision or a deed that is enforceable pursuant to the law or a promissory note, or another credit instrument to which the law confers the same value or a notarial deed evidencing the obligation to pay a sum of money.

Japan

Judicial sale of ship may be initiated by the claimant’s application to the court. The ship must be 20 gross tons or more and situated in a Japanese port. The claimant shall submit to the court:

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For above (a) (i) (ii) (iii): the certified copy of the judgment or the court record;

For above (a) (iv): the certified copy of the notarised agreement;

For above (b) (i): the certificate of registration;

For above (b) (ii): documents to prove the existence of a maritime lien, lien, including possessory lien, or other pledge or charge

Malta

A judicial sale of a ship is a means of enforcement of the executive titles listed in our Code of Organization and Civil Procedure, which inter alia, include judgments and decrees of the courts of justice of Malta, contracts received before a notary public in Malta, awards of arbitrators registered with the Malta Arbitration Centre and registered mortgages securing a debt certain, liquidated and due and not consisting in the performance of an act. Therefore, any creditor holding any one of the abovementioned executive titles can initiate judicial sale proceedings in respect of a ship.

Nigeria

A judicial sale of a vessel will be conducted following a judgment on the orders of a judge or, if a pre-judgment order is to be made, where it is in the interests of the parties that the vessel does not continue to deteriorate whilst it remains under arrest.

Norway

A forced sale may be initiated if a creditor, that has an enforceable basis for execution and the claim is due, submits an application for forced sale to the court. A prerequisite for conducting the forced sale is that that the proceeds from the sale must give full satisfaction for all parties that has higher ranking rights in the vessel than the applicant.

Singapore

See 1.1.

Slovenija

The judicial sale of a ship can be undertaken on the basis of a final court decision.

South Africa

The conditions, or terms, upon which a sale may be made is contained in Admiralty Rule 21(4), a copy of which is attached hereto marked Annexure "A". A judicial sale can only be conducted by Order of Court, but the sale may be by means of auction, private tender or treaty.

The courts have identified a number of factors to be considered in

determining whether good reason for a sale exists or not. In *The "TIGR" No.3 1998* (4) SA 206(C) the following factors were considered:

- (a) The cost of maintaining the arrest and subsequent deterioration of the Applicant's security;
- (b) Whether there is reasonable prospect that the owner will be able to show that the ground for arrest or attachment is not a good one;
- (c) The deterioration of the vessel and consequentially the Applicant's security;
- (d) The disparity between the amount of the claim and the value of the security;
- (e) The cost of maintaining the vessel;
- (f) The risk of the vessel escaping from arrest or attachment;
- (g) The potential prejudice to the owner;
- (h) The state of the market for second hand vessels of this type;
- (i) The loss of revenue from the vessel.

Spain

Only following to enforcement of a final Judgment.

Sweden

The enforcement (execution) must be based on a "title of execution". For sale of vessels the following titles may be relevant:

- (a) Court judgements;
- (b) Amicable settlements confirmed by a court;
- (c) Swedish arbitral awards;
- (d) Exequatur decisions by the Svea Court of Appeal in Stockholm regarding foreign judgments under the Swedish enactment of the Brussels of Lugano Conventions of the Brussels I Regulation, or regarding foreign arbitral awards under the 1958 New York Convention. On the basis of one of these titles, enforcement may be applied for – orally or in writing – with the Authority.

United States of America

Please see Answer to Question 1.2.

Venezuela

After a due process establish in the Civil Procedure Code and in case of maritime lien under the Commercial Maritime Code. Only by maritime credits, and by a Maritime Court, unless there in a labor claim or a criminal procedure.

1.4 Will a judicial sale of ship in your jurisdiction necessarily be conducted by or under the control of a court?

Argentina

Yes, there is no judicial sale of ships out of the scope of a court.

Australia

Yes. Judicial sales in Australia are conducted under the control of the Court by the Admiralty Marshal pursuant to Rule 70 of the Admiralty Rules.

Belgium

Yes. The Court having *authority ratione materiae* is a specialized Arrest Court which is part of the *Court of first Instance*. Decisions of that Court can be appealed. Appeal decision may be brought before the Supreme Court The Court having *authority ratione loci* being the Court in which Jurisdiction the vessel is to be arrested prior to the sale.

Brazil

Yes.

Canada

The judicial sale of a ship must be ordered by the Federal Court which issues a Commission addressed to a sheriff named by the court. The sale is ratified by the Court after the Sheriff reports on the performance of his commission and the Court approves the sale, the price and the buyer. The controlling factor is that the Court must approve the sale.

China

Yes. The maritime court will determine whether the application for auction is approved. The maritime court will also administer the procedures of the sale of the ship and appoint the committee for the auction. Such auction committee consists of 3 or 5 persons, including the enforcement officer of the court, the auctioneer and the ship surveyor retained by the court.

Croatia

Yes.

Denmark

Judicial sales of *registered* ships are handled exclusively by the bailiff's court and can not (as opposed to what is common practice with certain other types of judicial sales over movables/personal property) be referred to an auctioneer (in Danish: *auktionsleder*). If the ship is not registered⁵ then although the bailiff's court is competent to conduct the judicial sale itself, in practice this is rare. Usually the creditor claimant will request the bailiff's court to refer the auction to an attorney who is specially appointed as auctioneer in the relevant jurisdiction by the Danish Ministry of Justice (in

⁵ In Denmark, it is only mandatory to register ships above 20 GRT. Ships between 5 and 20 GRT *may* be registered, but this is not mandatory.

Danish: *Justitsministeriet*). This attorney will then conduct the auction. The auctioneer can not decide any disputes concerning the auction but must refer such to the bailiff's court.

Dominican Republic

Yes. The Court will fix a date for the public auction which will be conducted by a designated bailiff, known as the "public vendeur" (*vendutero publico*, in Spanish).

France

The first part of a judicial sale, relating to the service to the shipowners of summons to pay the claim amount and of the procès verbal of judicial sale is conducted directly by the claimant, without any previous control of a judge (Decree n° 67-967, October 27th, 1967, articles 31 to 39). But once summons to pay the claim amount and the procès verbal of judicial sale are delivered to the shipowner, the claimant has to sue this one before the competent court to apply for a judgement ordering the judicial sale. At this time, the judge controls the regularity of the procedure: evidence of an enforceable title, service of summons and procès verbal of judicial sale.

Germany

A judicial sale in Germany must always be conducted under the control of the court. § 15 in conjunction with § 16 ZVG stipulates that the person seeking enforcement must make an application for a judicial sale to the municipal court in whose jurisdiction the vessel is actually situated at the time of application.

Italy

Yes. Article 643 CN provides that the expropriation (or "forced execution") must be conducted before the court sitting in the district where the ship is located. The CCP provides (article 591 bis) that, upon hearing the parties concerned, the execution judge may entrust a notary with the tasks provided for by law with regard to the auction. However, it is doubtful whether this applies to the forced expropriation of a ship, as there is no express reference in the CN to such a possibility, whilst the CN refers (article 681) to the provisions of the CCP as regards the performance of other tasks relating to the forced expropriation proceedings.

Japan

Yes, by the court in accordance with the *Civil Enforcement Law*, except in the case of an arrest by the tax authority, which conducts related auction sale.

Malta

A judicial sale of a ship in Malta must be conducted under the authority of the

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court. The Court would appoint a public auctioneer to conduct the auction in the presence of the Registrar of Courts.

Nigeria

Yes. Order 14 Rule 2(1) of the AJPR provides that the Admiralty Marshal of the Federal High Court shall conduct the sale of any ship or property ordered to be sold under the Rules. Consequently, the Admiralty Marshall only proceeds to effect a judicial sale pursuant to the orders of the court. Usually, the court orders the sale after a party to the suit applied for it at anytime during the pendency of the suit , or the court may, *suo motu* at any stage of the proceeding, either with or without application, order the sale if the ship if it takes the view that it is deteriorating in value. The order for sale may also be made after final judgment.

Norway

A forced sale will be conducted by or under the control of a court. Usually forced sale will be conducted by an assistant of the court, which will generally be a professional ship broker who is familiar with the market for the type of vessel in question. After the broker has obtained offers for the vessel, he will present the offers to the creditor. The creditor will then have to decide whether he wants the court to confirm a sale on the basis of the bid he finds acceptable. In order to complete the sale, the court will have to check whether the requirements for confirmation are fulfilled; the offer must fully satisfy all parties with higher priority claims in the vessel than the creditor demanding the sale (maritime liens and other statutory liens/charges will only be considered to the extent it is clear that the lien/charge in question will prevail), and the court must not confirm a sale if it considers that further efforts to circulate the vessel may result in higher net proceeds.

Singapore

Yes. A judicial sale is a sale ordered by the Court and is subject to control by the Singapore Court. The mechanics of appraising and selling the ship is deputed to the Sheriff of Singapore, whose function is to appraise the ship, advertise for her sale, award the sale to a successful bidder and to execute a Bill of Sale in favour of the successful bidder.

Slovenija

Yes.

South Africa

Yes, always.

Spain

No. It may be conducted by an expert sale agent but under the control of the Court.

Sweden

Enforcement must be applied for with the relevant office of the Authority. The following judicial sale of the ship must be conducted by or under the control of the Authority. So, even if the actual sale is conducted by an auction company, still, the judicial sale is under the control of the Authority.

United States of America

Please see Answer to Question 1.1.

Venezuela

Yes. Only might be conducted by a First Instance Court to execute a definitive court decision or arbitration award.

1.5 Is auction the only method of judicial sale of ships in your jurisdiction? If not, please list and explain in detail all other ways, such as private treaty, which may be used for judicial sales of ships?

Argentina

The auction is the usual method of judicial sale of ships. A private treaty for the sale of a ship during a court proceeding can be judicially homologised where there is an agreement between all the creditors that are parties to a judicial sale. The homologisation of a private treaty will have the same effects as the judicial auction.

Australia

No, auction is not the only method of sale of ships in Australia. Pursuant to Rule 70 of the Admiralty Rules the Court may direct that the sale be by auction, public tender or any other method. Even though the Admiralty Rules provide that the sale may be auction or public tender it most commonly occurs by private treaty after reasonable advertising by the Admiralty Marshal in local and international newspapers and/or publications.

Belgium

There are two methods of judicial sales of ships:

- a public auction, the most usual one⁶
- by way of a ship's broker⁷

Moreover an owner can be dispossessed of his vessel due to a possessory lien held by the inscribed holder of a hypotheque⁸. These possessory liens regard

⁶ Chapter 5 of part 5 of the Judicial Code : judicial sales of seagoing vessels and interior waterway vessel.

⁷ Art. 1553 juncto 1526bis Judicial Code.

⁸ Art. 23 and 24 of the law of 04.09.1908.

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vessels registered in Belgium only and the Belgian Maritime Law Association therefore presumes it is not subject of the present questionnaire of the CMI.

Brazil

No. Prior to the auction, the creditor is entitled to adjudicate the attached assets, or the ship in this particular case. Should the adjudication not take place, the creditor may move for the appointment of a broker by the court, so as to sell the vessel. Where neither the adjudication nor the private sale prove feasible, the court orders the auction.

Canada

The Court has the power and discretion to direct that ships can be sold by public auction or by private contract. If a public auction is chosen, the Court can determine if the auction will be by sealed bid tender or in person; the court has the power to reject the highest bid submitted and order a public auction, where bids can be submitted by telephone. Also, the Court has the discretion to order an appraisal of the vessel, whether the sale is by auction or by private sale, and to set the conditions as to publicity of the sale in the interests of creditors.

China

Yes. According to Article 2 of Provisions of the Supreme People's Court on Auction and Sale of Properties in Civil Enforcement Proceedings, When a people's court appraises the sealed up, detained, or frozen property at the current rate, auction shall be the first method to be taken, unless otherwise specified by laws or judicial interpretations. At present auction is the sole method used for judicial sale of ships in China.

Croatia

As an alternative to public auction, a ship may be sold by way of a "direct bargain". This is possible only if the parties to the judicial sale (i.e. the creditor as applicant and the shipowner as the respondent), mortgages, lienors and beneficiaries of personal servitudes that expire upon the sale of a ship, agree prior to the sale of the ship by way of public auction that the ship will be sold by direct deal through an authorized shipbroker, court official, notary public or by other means. In such case, a ship sale and purchase agreement will be entered into between the person authorized by the court to sell the ship (the broker etc.) and the buyer. The said method of sale is still under the control of the court and retains the status of a judicial sale, and should therefore be distinguished from the sale by way of private treaty (which is one of the powers belonging to holders of Croatian ship mortgages).

Denmark

In Denmark judicial sales are done by auction, whether through the bailiff's

court (in case of registered ships) or a private auctioneer (in case of non-registered ships). A private treaty sale, e.g. selling the ship by a receiver and a manager without a court order through the bailiff's court, is not considered a judicial sale and, accordingly, does not extinguish encumbrances that does not receive coverage out of the sale price.

Dominican Republic

Yes, only through public auction.

France

Auction is the only method of judicial sale, except the case where the Court makes the sale to be carried out by a broker or an auctioneer, which does not happen often.

Germany

Is auction the only method of judicial sale of ships in your jurisdiction? If not, please list and explain in detail all other ways, such as private treaty, which may be used for judicial sales of ships? A judicial sale of a vessel in Germany must always be conducted by way of auction as regulated in detail in the ZVG.

Italy

Auction is the standard method. However, article 661 CN provides that, if the auction cannot take place due to the lack of bidders, new auctions must take place pursuant to the court's decision, each time on the basis of a price reduction by no less than 20 per cent. Article 661 CN also provides that, if, even after a reduction of a total of 40 per cent, there are no bidders, after having heard the creditors and the owner of the ship, the court will decide that the sale take place without an auction and will detail the relevant conditions.

Japan

Yes, auction is the only method of judicial sale of ships. Of course, the parties having an interest in the judicial sale can agree to a private sale and withdrawal of the judicial sale procedure. In this case, the distribution of sale proceeds may be decided before the court, but this is beyond the scope of the questionnaire.

Malta

In terms of the Maltese Code of Organization and Civil Procedure, a person holding an executive title may sell a vessel via judicial sale by auction or via court approved private sale by virtue of the 2008 amendments to our Code of Procedure. The court approved sale is a hybrid sale whereby any creditor in possession of an executive title may request the court to approve the private

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sale of a ship in favour of an identified buyer in consideration of a determined price, in terms of which the vessel is sold free and unencumbered, just like in a judicial sale. However, in this regard, our law requires the applicant to obtain appraisals for the vessel from two independent and reputable valuers. In addition, the applicant must adduce evidence in court to show that the private sale is in the interest of all known creditors and that the price is reasonable in the circumstances. This, in practice, implies that the price tendered must be at least equal to or in excess of the valuations obtained. Hence, the relatively new procedure of the court approved sale is a more expeditious and efficient method of sale, which does away with the lengthy procedures and unnecessary costs inherent in a judicial sale, while also enabling the seller to negotiate a fair price for a vessel which is sold free from encumbrances. Under the security documentation normally agreed between a mortgagee bank and the shipowner, the mortgagee bank would also normally have the right to sell the ship privately in case of default by the shipowner. This is possible under our Merchant Shipping Act. However, such private sale does not give clean title to the buyers.

Nigeria

Whilst Order 14 Rule 2 of the AJPR provides for sale by auction by the Admiralty Marshal, it is also recognised that the court may order the Admiralty Marshal to sell by private treaty. Where the sale is by a State High Court (which has no admiralty jurisdiction), the judge may direct the Sheriff of the Court on the procedure for sale.

Order 7 Rules 2 and 3 of the Judgement (Enforcement) Rules made pursuant to the Sheriffs and Civil Process Act 1945 provide:

“2. Subject to the provisions of any Act or Rule, the sale of any property under writ of execution shall be conducted according to such orders as the court may make on the application of any person concerned.

“3(1) Before filing any application for leave to effect the sale under a writ of execution of any property otherwise than by public auction, the registrar shall deliver to the applicant on demand a list containing the name and address of every person at whose instance any writ of execution against the debtor has been issued, of which the registrar has notice.”

Norway

No. Forced sale may also be conducted by an assistant of the court, as explained in section 1.4 above.

Singapore

A judicial sale by public auction is not the only method by Court order. A judicial sale can take place by private treaty. One of the frequently used form of judicial sale by way of private treaty is the sale of a ship by way of sealed

bidding. In judicial sale by sealed bidding, the Sheriff advertises the sale of the ship and invites sealed bids and the purchase price to be submitted to him within a specified date and time. After the date and time has passed, the Sheriff will open all sealed bids and will award the sale of the ship to the highest bidder above the appraised value. Another form of sale by private treaty could be when a Court, satisfied that the sale would not prejudice creditors' claims, allows the sale of a vessel to an identified third party without the process of a public auction or sealed bidding. In addition to the above, it should be mentioned for the sake of completeness that a ship can be sold forcibly pursuant to execution under the legal process known as writ of seizure and sale. This legal process is available to all parties who hold a judgment in their favour ordering the Respondent to pay a sum of money to the Claimant. If the Claimant believes that the Respondent has assets in Singapore, the Claimant may request an issuance of a writ of seizure and sale, which is a document which empowers the Bailiff of Singapore to seize the property of the Respondent and to sell that property for the purpose of applying the sale proceeds to the satisfaction of the judgment. This legal process is available not only to normal civil proceedings but also to admiralty proceedings. Therefore, if a ship enters Singapore waters and is served with admiralty proceedings (but not arrested) and the Claimant goes on to obtain judgment in the admiralty proceedings against the Respondent shipowner, the Claimant may issue a writ of seizure and sale which will authorize the Bailiff to seize the ship if/when she is in Singapore and sell her for the purpose of applying the sale proceeds to the satisfaction of the judgment of the Claimant in the admiralty proceedings.

Slovenija

Auction is the only one.

South Africa

No. The court may order the sale of the ship by way of auction, private tender or treaty.

Spain

No. It can be made by treaty with the Court's approval and by means of a sale expert Agency.

Sweden

Yes, when it comes to registered ships. The auction must be public (10:1 CoE).

United States of America

No, auction is not the only method of judicial sale of ships in the United States. As mentioned in the Overview, vessels may be seized and sold under

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the laws of many states, and those states may authorize various types of self-help remedies, especially where, for example, the parties have provided for such state-law remedies in a mortgage. A federal court may also authorize the private sale of a vessel. See 28 U.S.C. § 2001(b). Section 2001(b) of Title 28 of the United States Code provides:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale. It should be noted, however, that non-judicial sales and sales conducted pursuant to state law do not extinguish existing maritime liens on the vessel.

Venezuela

Yes.

2. *The key procedural elements of judicial sales of ships*

Note: Based on the understanding that judicial sales of ships may occur in different kind of actions (such as an action in rem, an action in personam, an action for conservation or an action for enforcement) the procedures for judicial sales of ships may vary. It is hoped that the answers and comments to the questions in this group will help to establish the most common elements or the basic characteristics of the procedures for judicial sales of ships, and to determine the necessary procedural elements of a judicial sale of ship so that it will be internationally recognised.

2.1 *Briefly and without going into detail, what is the general procedure or the key procedural elements of a judicial sale of ship in your jurisdiction?*

Argentina

Pursuant to Section 593 of the Argentinean Navigation Law, the judicial sale of a ship shall be carried out following the procedural formalities set out in the Code of Procedure for the auction of real state, as follows:

- (i) First of all, the petitioner shall request from the National Register of Ships a report on any mortgages, embargoes attached to the ship as well as any other encumbrances or inhibitions imposed on the shipowner.
- (ii) Once said report shall have been received by the court, the petitioner shall procure a court order for the judicial auction of the ship.
- (iii) Mortgagors shall be demanded to file their titles.
- (iv) Then, the judge shall be asked to appoint a court auctioneer and fix the date and the place for the auction.
- (v) The auction date and place, bidding conditions and the starting bid price shall be published for several days in local newspapers.

Our Navigation Law also provides for a special winding up proceeding in the event that the overall amount of preferential credits attached to a ship *prima facie* exceeds the starting bid price fixed for the judicial sale of said ship. This proceeding will be instituted upon the request of any of the preferential creditors. The judge will order that judges hearing the lawsuits for the embargoes or inhibitions concerned be put on written notice of the ship judicial sale. In addition, the commencement of this winding up proceeding and the date of the hearing for the attendance of all the preferential creditors and the ship-owner will be published in the Official Gazette and one of the local major newspapers for five days. At the same time, a written notice will be displayed in the offices of the National Register of Ships and on board the ship for 10 days. Any interested party will have 15 days after the last publication to file a pleading challenging the judicial sale.

Australia

The key procedural elements in relation to a judicial sale in Australia are as follows:

- A person who has obtained a judgment in relation to a ship or other property under arrest is required to bring an application for valuation and/or sale of that ship or other arrested property. The application should be made in accordance with Form 26 of the Admiralty Rules⁹
- An order for valuation and/or sale of the ship or other property will be made in accordance with Form 27 of the Admiralty Rules¹⁰. The Order includes, amongst other things, a direction that the Admiralty Marshal sell the ship under the Admiralty Rules and that the Marshal engage ship brokers to value the ship in writing and advise as to the method of sale. An example of an Order for Valuation and Sale of a Ship is attached and marked as Annexure “A”.
- The Admiralty Marshal would ordinarily then take the following steps:

⁹ Rule 69(1) and (2) of the *Admiralty Rules* 1988 (Cth)

¹⁰ Rule 69(3) of the *Admiralty Rules* 1988 (Cth)

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- Prepare an inventory of items or property on board the ship owned by the persons other than the ship owner and which are to be excluded from the sale of the ship or other property.
- Appoint a ship broker to value the ship or other property under arrest. This valuation is to be kept confidential.
- Advertise the sale of the ship or other arrested property in a national Australian newspaper as well as in at least one international maritime newspaper or publication (e.g. Lloyd's List).
- Receive bids/offers for a fixed period of time and, where a number of bids or the highest bid is above the valuation, accept the bid subject to Court approval. In the event that the highest bid is below the valuation amount, seek an Order from the Court that the bid can be accepted on the terms of the Admiralty Marshal's conditions of sale.
- Enter into a Bill of Sale with the purchaser of the ship. An example of Bill of Sale is attached and marked as Annexure "B".
- File a return of sale and pay the proceeds of sale into Court. An example of a Return of Sale is attached and marked as Annexure "C".
- Publish in a national Australian newspaper and an international newspaper or publication a notice of application to determine priorities and inviting anyone who has a claim against the ship to commence proceedings to enforce the claim before a specified date.
- Pay out proceeds of sale in accordance with Court order. In Australia, no poundage is payable in respect to a sale of a ship under the Admiralty Act.

Belgium

First: Hold an enforceable title

The ones having an enforceable title against the shipowner or against a debtor for which the vessel stands guarantee may ask for the judicial sale of the vessel. An enforceable title does not mean a final title. Court's decision which are enforceable notwithstanding appeal may lead to the forced sale of a vessel. Enforceable titles are either court's decision or notarial deeds (Belgian or foreign).

Second: Serve an Order to pay

An order for payment indicating the amount due and the vessel which will be arrested in case no payment arises¹¹ is to be served. This order is served *in personam* to the debtor or at his domicile¹². Service is also possible to the master (or one of the officers on board or if none of the above arises to the water police) of the seagoing vessel which guarantees the maritime claim or maritime lien¹³. If the vessel is not a property of the debtor the Order to pay

¹¹ Art. 1546 J.C.

¹² Art. 1547 J.C.

¹³ Art. 1547 J.C.

must moreover be served to the owner or an agent of the owner of the seagoing vessel¹⁴.

Third (if no payment): Serve executory arrest of the vessel.

(a) There was no previous conservatory arrest:

In case above Orders to pay do not result in immediate payment the vessel may be arrested¹⁵. The arrest must be served¹⁶. Lack of service results in the nullity of the arrest¹⁷. Depending on the circumstances service will be done as follows:

– If the *ship arrested is the property of the debtor* service of the arrest is done to the captain, or if he is not there the one who guards the ship.

– If the *ship arrested is not the property of the debtor* and if the owner of the ship has his registered address in the jurisdiction of the arrest the arrest is served to the captain (or in his absence the one who guards the ship) and also, within 3 days, to the owner of the ship and to the debtor.

– If the *ship arrested is not the property of the debtor* and if the owner of the vessel is not registered within the jurisdiction of the arrest, service of the arrest must be done to the captain (or in his absence to the one who guards the ship) and to the debtor.

The arrest is to be:

- *inscribed in the Belgian Ships Register* for vessels registered in Belgium, or
- *notified to the Belgian Ships Registrar* who will note it in the Book of presented documents for vessels which are not registered in Belgium¹⁸.

(b) If the vessel to be sold is already under conservatory arrest:

Quite often, if not always, the executory sale of a vessel follows upon a conservatory arrest as per the 1952 Arrest Convention. A conservative arrest required a prior decision of the Arrest Court¹⁹. That courts decision is served to the master (or in his absence to the person entrusted with the guard) of the vessel²⁰ at the moment of the arrest and served to the debtor of the claim²¹. The conservatory arrest is presented to the Belgian ship registrar who must inscribed in the *Ships Register* (If ship is registered in Belgium) or mention it in the *Book of presented documents* (if the vessel is not inscribed in the Belgian Ships Register)²². If no payment occurs after the service of an *Order*

¹⁴ Art. 1548 J.C.

¹⁵ Art. 1549 J.C.

¹⁶ Art. 1550 J.C.

¹⁷ Art. 1556 J.C.

¹⁸ Art. 1552 J.C.

¹⁹ Art. 1467 J.C.

²⁰ Art. 1471 J.C.

²¹ Art. 1390 and 1477 J.C.

²² Art. 1472 J.C.

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to pay together with the enforceable decision the conservatory arrest is changed into executory arrest²³.

Fourth: Request the court for an *authorisation to sell*.

Within 8 days of the arrest (or transfer from conservatory arrest to executory arrest) a request is filed with the court for the appointment of a public officer who will be entrusted with the public sale of the vessel²⁴. This is an ex-parte application to the court in which the appointment of a Court controlled public officer for the sale of the vessel is requested. Usually a courts bailiff is appointed by the Court. The Court also determines the manner in which the sale must be made public which nowadays includes publications in known specialized newspapers such as *Tradewind* and *Lloyds List*.

Fifth: Notification of *conditions of sale*.

No later than 15 days prior to the public auction the following persons receive notice of place, day and time of the sale:

- the debtor of the claim,
- the owner of the ship,
- all inscribed (Belgian Ships Register) and opposing creditors.

The notice also asks to take note of the general sales conditions²⁵. The conditions of sale provide that the vessel is sold free of all encumbrances. The public officer proceeding with the sale will send to any third party claiming to be a creditor by registered mail the sales conditions. In case there is a conflict on the sales conditions this must be brought before the public officer who will as from then suspend all activities, inform the Court and the court will hear all parties involved (inscribed and opposing creditors and any party who claims to be a creditor) after inviting them by judicial mail.

Sixth: The public auction of the vessel.

At that public auction the vessel will be provisionally adjudicated (sold) to the highest bidder. Remark: It may be requested to proceed with a sale via a ship's broker²⁶.

Seventh: In case of higher bid: second auction.

If a higher bid is entered within 15 days after the provisional adjudication at the first public auction a new (second and final) public auction will be held at which the vessel will be sold at the highest bidder. All formalities as from the *Order to pay* referred above have to be respected again.

Eight: After final adjudication: *Right to oppose*

The Adjudication of the vessel to the highest bidder is served the debtor, the owner of the vessel and all inscribed creditors or persons who made

²³ Art. 1491 J.C.

²⁴ Art. 1553 J.C.

²⁵ Art. 1555 J.C.

²⁶ Art. 1553 J.C.

themselves known²⁷. At sanction of loss of rights claims for annulment of the public sale must be filed within 15 days of service of this notice²⁸. In practice we are not aware of any such proceedings in the recent past.

Brazil

A judicial sale requires a prior full enforcement procedure, as per the rules set out in the Civil Procedural Code, which provides two different procedures. The enforcement of a judgment or judicial title is conducted on the same files of the suit, so called “execution of judgment”; it is simpler: under the rules of Articles 475-I to 475-R of that Code, the debtor is notified to pay or to challenge the sum enforced, even though the creditor is entitled to apply for the attachment of assets. Further enforcements, of non-judicial titles, are conducted under Articles 612 to 713 of the Procedural Code. The debtor is summoned to pay or to bring assets for attachment. Once attached the assets, as named by the debtor or, if he does not name assets, by the creditor, the debtor may oppose to the enforcement by way of stay proceedings. Not before the court decision of these stay proceedings – if rejected (the first grade decision is enough, for an appeal does not stay the execution) –, the court will order the judicial sale of the attached assets – in the case of failure of payment, adjudication or private treaty –, appointing an auctioneer and ordering public notices, the general contents of which are: description of the assets, the value of the court appraisal, the place where it is found, the date and time of the auction, possible liens or legal actions involving the particular assets and the warning that a second auction will be held, should the successful bid be lower than the court appraisal, very cheap bids not admitted. The successful bidder shall pay the price immediately or within 15 days, whereas the court may accept proposals for payment in instalments; next step the issue of the certificate of property in his favour.

Canada

The key procedural elements in the judicial sale of ship in Canada are the following:

(i) A motion made to a judge of a Federal Court for the appraisal and sale of the ship. The ensuing order will establish whether the vessel should be appraised, whether the sale should be by private contract or public auction, the method and extent of advertisement of the sale, whether a broker should be used to find a buyer, it will commission a sheriff who will supervise the appraisal and sale and will set out the conditions of the sheriff's appointment and compensation, including the right of the sheriff to engage a ship broker;

²⁷ Art. 1557 J.C.

²⁸ Art. 1557 J.C.

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(ii) The vessel will be appraised under the authority of the Sheriff, the sale will be advertised and if it is to be conducted by public auction, deadlines to submit bids or the date of the live auction will also be advertised. In the interim, the Sheriff may appoint an agent to supply the vessel and its crew until the ship is sold;

(iii) Once the bids are opened, the public auction is held or the private buyer is identified and the price is established, one of the parties must reapply to the court for an order confirming the sale to the buyer identified by the sheriff.

(iv) Throughout the process, the Court may be called upon to deal with incidental issues in connection with the sale - the removal and repatriation of crew members, movement of the ship from the place of arrest, the unloading of cargo, advances of funds to meet various requirements, such as hull & machinery insurance and pollution insurance, certain maintenance expenses to preserve the ship, placing of guards, etc.

China

There are four key procedural elements in the judicial sale: (1) an application for auction needs to be made to the maritime court where the ship has been arrested; (2) After approval by the court, an announcement of the proposed sale shall be made by the court in the media for no less than 30 days and also notice should be made to the ship registrar, the registered ship owners and known holders of a maritime lien, mortgage or other charges on the ship of the sale. (3) The court will appoint auctioneers and surveyors to constitute the committee for the auction; (4) the court shall make a public announcement of the completed sale in the media.

Croatia

Judicial sales of ships in Croatia observe the following general pattern:

- (i) issuance of a "writ of execution" (the sale order);
- (ii) evaluation of the ship and determination of the conditions of sale;
- (iii) sale by way of public auction or direct deal;
- (iv) distribution of the proceeds of sale.

Denmark

We assume that the main area of interest in this respect is registered ships, either in Denmark or other countries, and that accordingly, there is no need to account in any detail for the special requirements for judicial sales of non-registered ships in Denmark. With reference to Question 1.4 above there are different procedures for conducting judicial sales depending on whether or not the ship is registered. However, for the overall purpose described in the questionnaire most of these differences are in our opinion not relevant. Consequently, unless otherwise written, the following remarks apply only to

judicial sales of registered ships. In order for a creditor to enforce his claim through judicial sale of a ship, he must first of all submit a written request/petition to the bailiff's court. It is a requirement that the ship is present in Denmark. Typically, the request/petition will be submitted to the local bailiff's court in the jurisdiction where the vessel is physically located, cf. Section 487 (1). As mentioned above it is a requirement for the judicial sale that the creditor has levied prior attachment on the ship for his claim, cf. the requirements described in Question 1.3 above. However, it is not uncommon that the creditor submits a combined request/petition to the bailiff's court in order to have the court consider both aspects at the same time and avoid delay. The attachment should be registered on the ship with the Danish Ships Register/the Danish International Ships Register in order to protect the execution against claims from other creditors. As a main rule the owner's possession of the ship is not affected by the levying of an attachment. There is no requirement that the vessel shall be arrested through the bailiff's court at the same time as the attachment is levied or when the judicial sale is actually completed. In this respect it only follows from the AJA, Section 519 that the debtor may not use the ship in such a way that could damage the creditor's interests. According to the AJA, section 523(1), the bailiff's court does however have the discretionary power to order that the ship must be taken out of the possession of the owner. Furthermore, according to the AJA, Section 520(2) may decide, if necessary, that possession of and control over the ship must be given to an administrator in order to ensure that the ship remains moored in the jurisdiction and is ready to be sold at the judicial sale. If relevant, it will usually be the attorney for the creditor claimant that is appointed as administrator. Upon the court deciding to levy attachment on the ship, the application for judicial sale by auction can be filed. With respect to registered ships, the application must be accompanied by an updated certified transcript of the relevant register of ships which shows details of ownership and registered rights/encumbrances over the ship, cf. the AJA, Section 544(2). Upon receipt of this application the bailiff's court must examine whether or not the terms for judicial sale are present, cf. the AJA, Section 542. If so, the court will proceed with the formalities concerning announcement. The AJA stipulates that a judicial sale of a registered ship must be announced at least 6 weeks prior to the scheduling for the judicial sale in the Danish Official Journal (in Danish: *Statstidende*) and - if requested by the bailiff's court - also in one or more other newspapers and magazines which are generally read in the shipping industry²⁹. Announcement must take happen

²⁹ For non-registered ships the announcement must be made similarly, but only at least 2 weeks prior to the auction. However, the auction can in no circumstances be conducted before at least 4 weeks after the date of the levying of attachment on the ship. This is because the debtor has the right to appeal the decision to levy attachment within 4 weeks.

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at least 2 times, cf. the AJA Section 544 – the first time being at least 6 weeks before the auction for registered ships³⁰. With respect to registered ships the relevant registration authorities – in Denmark, the Danish Ships Register/the Danish International Register of Ships – must also be informed at the same time as the announcement. If the ship is not registered in Denmark but in a foreign jurisdiction, the AJA requires that the judicial sale is also announced in the country of registration in accordance with their local rules for publication of judicial sales and in any event no later than 1 month before the auction. In this respect an “affidavit” from a reputable local attorney, confirming that their local rules regarding announcement of judicial sales have been met will usually have to be presented to the court. At the same time as the first announcement, the court will inform the registered owner of the ship by registered mail and the court will also inform all parties with registered rights/encumbrances over the ship, provided their addresses appear from the registry. The announcement of the judicial sale must contain a clear and accurate specification of the timing and the place of the auction and a description of the ship which is to be sold. In this respect at least all of the information contained in the transcript of register must be included. There is no fixed price for the ship before the judicial sale is performed. Potential buyers may be allowed to inspect the ship before the auction, provided that the owner/administrator gives his consent. There are no specific regulations on this. A collector (in Danish: *inkassator*) will usually be appointed by the court to be present at the auction to decide whether or not a potential buyer may be allowed credit, and to collect the funds. Most often the debt collector appointed will be the creditor claimant or his attorney. Potential buyers are not obliged to give any kind of guarantee in advance in order to be allowed to make bids. A judicial sale is carried out by the bailiff’s court as an “open oral auction” (usually) in the same jurisdiction where the attachment was levied, where the persons present may file bids for the ship. The creditor claimant usually drafts the terms for the auction sale, cf. the AJA, Section 547(1), subject to the approval of the court. In this respect the creditor claimant may for example decide to stipulate that the buyer is obliged cover the costs involved in the judicial sale besides the sale price or as a part thereof. If necessary, a sale prospectus may be published. It is a condition for the creditor claimant to be able to demand that the ship is sold at the auction that the accepted bid covers all mortgages and other attachments (if any) which have priority ahead of the attachment made by the creditor claimant. If for example the creditor claimant has applied for the judicial sale based on a first priority mortgage the accepted bid must be sufficient to cover all valid claims which have maritime lien status *under Danish law*. However, it can be agreed

³⁰ 2 weeks for non-registered ships.

with the buyer that instead of covering the claims with priority ahead of the creditor claimant, the buyer simply assumes/takes over these obligations. Since the minimum amount of time between the levying of attachment on the ship and the judicial sale auction is 6 weeks, it follows that any claims, counterclaims or objections against the attachment are barred from being invoked during the auction, cf. the AJA, Section 583(2). Such objections etc. are subject to a 4 weeks appeal period after the attachment has been levied. The price accepted must be the highest bid. However, if the bailiff's court believes that it may be possible to get a higher bid, it may decide, that a second and last auction shall take place, cf. the AJA, Section 550(5). This could be the case if for example the bids received at the auction were very small, and the court feels convinced that a significantly higher bid may be obtained. Whether or not the bids received would cover the creditor claimant is not in itself a decisive factor. A second auction would normally be made subject to the debtor placing adequate security for the costs involved in holding the first auction. Only the court can decide that a second auction is to be held. Neither the debtor nor any creditors whose claims were not covered in the auction can make any demands in this respect. When the auction has been completed the collector appointed by the court must provide the court with an account of the funds within 2 weeks. The court will then transfer the funds to the creditor claimant and to the previous owner - provided the funds were sufficient to cover the claim of the creditor claimant. If there are other creditors besides the creditor claimant the bailiff's court must prepare a draft account stipulating the distribution of the funds to the various entitled creditors. The entitled creditors are those that have registered their rights on the ship. If there are no objections to the draft account, then the funds will be distributed in accordance therewith after 4 weeks, cf. the AJA, Sections 554-555. The provisions on the order of priority, i.e. who gets payment before who, are found in Chapter 3 of the DMA which is based on the Convention. The relevant factor is the nature of the claims, and these are divided into two categories. Firstly, maritime liens. Secondly, mortgages. The only claims which will have to be paid from the sale proceeds in advance of all other rights are the costs (determined by the bailiff's court) in connection with the attachment (and arrest) and the judicial sale, cf. the DMA, Section 76(2). The buyer must comply with the individual terms set out for the judicial sale, cf. above. Usually, if the buyer is a creditor who has rights over the ship through a mortgage or an attachment, he can set-off the amount secured instead of having to pay the full sale price. Usually, the sale price will be set in Danish Kroner (DKK), although this is strictly not a requirement. If any dispute arises about the distribution of the funds, which can not be solved immediately by mediation through the bailiff's court, the parties will be referred to solve this dispute through the ordinary courts. For this reason, before the auction is conducted, a preparatory meeting is often

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held to discuss and explain the auction procedure. Section 584(1) of the AJA provides for a 4 week period during which relevant parties may appeal (in Danish: *kæere*) the judicial sale. When the appeal period has expired, and provided the bailiff's court has not received any notices of appeal, the buyer can demand that registered encumbrances that did not receive coverage out of the sale price are deleted from the ship's registry. That does not mean to say that the relevant creditors lose their claim against the debtor, but the security registered over the ship ceases.

Dominican Republic

An existing due and collectable debt and an arrest of a ship certain publications have to follow prior to the public auction.

France

Note: One must have in mind that under French Law there is no action *in rem* against ships, but an action *in personam* against the debtor, the ship owner. That explains that the procedure is conducted against the registered shipowner (See hereafter §2.1) before the Court where the ship has been previously arrested.

No judicial sale can be conducted without, at first, the service to the shipowner of summons ("commandement de payer" according to Decree n° 67-967, October 27th, 1967, articles 31 to 33), then, between 24 hours and ten days, the service of a procès verbal of judicial sale both to the shipowner and the Port authority where the ship is berthed and to the consul of the state whose ship beats flag. The claimant serves a writ to the shipowner to appear before the Court which will deal with the sale. Others creditors of the same shipowner are to be provided with a notice of the procès verbal of judicial sale. A first judgment is held, fixing the date and conditions of the judicial sale, and the sale itself is carried out by a public auction (or by a broker or an auctioneer, as said hereabove, § 1.5)

Germany

At first, the creditor has to file an application for judicial sale of a ship with the local court ("Amtsgericht") of the district where the ship is located. The court will verify whether the formal requirements for the judicial sale of the ship are met (i. e. existence of an enforceable title which has been served to the debtor). The court will then order for judicial sale and - at the same time - order for the ship to be taken into official custody. This order for judicial sale will be served to both the creditor and the debtor. The court will also inform the ship register, which will make an entry into the register about the order for judicial sale ("Zwangsversteigerungsvermerk"), § 19 (1) German Judicial Sale Act ("Gesetz über die Zwangsversteigerung und die Zwangsverwaltung-ZVG"). The court will inform the debtor and the creditor(s) about the scheduled

auction date; this date will also be publically announced. In the auction, the ship will be sold to the highest bidder. The court will issue an order about the successful bid (“Zuschlagsbeschluss”). The proceeds of the auction will be distributed to the creditors at a later date. The auction proceedings will end with the amendment of the ship register entry.

Italy

- i) The first step is the service of a notice from the creditor upon the owner of the ship being the debtor to require the debtor to pay its debt within a time limit of no less than 24 hours; however, in case of urgency, the court may authorize that payment be made immediately. Service of the notice must be accompanied by service of a certified copy of the enforceable title (normally a judgment).
- ii) Once the time frame within which payment is required has expired, the creditor may apply for the attachment of the ship by the marshal.
- iii) After no less than thirty days and no more than ninety days from the attachment, the creditor may apply before the relevant court for seeking the judicial sale of the ship. A copy of the application must be served upon the debtor and the other creditors that have joined the proceedings (article 653 CN).
- iv) Within thirty days from the service and no later than ninety days from the attachment, the creditor that has applied for the sale must file in court all the relevant documents. At that time, a judge shall be appointed to conduct the proceedings leading to the sale and an expert shall be appointed to make a valuation of the ship. The expert shall be required to submit his evaluation within, and no later than, thirty days (article 654 CN).
- v) After five days from the filing of the evaluation, and after having heard the creditor and the debtor, the judge, and, if the ship flies a foreign flag, the Consul of the State the flag of which the ship is flying, order the sale by auction, indicating: a) the basic price specified by the expert, b) the day and time of the auction, the amount that must be deposited by the bidders in order to be allowed to participate in the auction, c) the increase of the bids, and d) the time frame within which the successful bidder must pay the balance of the purchase price.
- vi) Once the price is paid, the judge issues a decree by which title of the ship is transferred to the successful bidder and a copy of the decree is sent to the ship’s registrar for the deletion of the encumbrances and the endorsement of the name of the new owner or the deletion of the ship from the register, as the case may be (article 664 CN).

Japan

The court having its venue over the place where a ship is located, has jurisdiction over the judicial sale. By court order, the bailiff will take the

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ship's certificate of nationality and other ship's documents necessary for her to navigate in order to stop her departure from the port. In the case of ships registered in Japan, the court will order that the commencement of the judicial sale is registered with the register of ships. After the arrest, the court will review the ship's condition and determine the minimum auction price. Then, the auction will be made and the highest bidder will make payment of the bid price to get delivery of ship, while the sale proceeds will be distributed to the applicant and the other claimants who participated in the judicial sale as claimants. The auction procedure may be cancelled by submitting the necessary documents to release the ship, such as a court order, guarantee, or certified copy of a judgment to cancel the auction procedure.

Malta

The ship has to be physically in Malta. Normally, a Warrant of Arrest is issued by the execution creditor against the vessel in order to ensure that the vessel physically remains in Malta and within the jurisdiction of the Maltese courts. The key procedural elements of a judicial sale of a ship are as follows:

(a) An application is filed in Court by the execution creditor requesting that the vessel be sold by judicial auction. For our purposes, we shall assume that the Court issues a decree acceding to the request and ordering that the vessel be sold by judicial auction.

(b) After two days have lapsed from the service on the debtor of the decree ordering the judicial sale by auction of the vessel, the court will appoint one or more days for the sale by auction of the vessel and order the issue of advertisements;

(c) The advertisement will be signed by the registrar and will state the date of the judgment or decree ordering the sale by auction, the nature of the thing to be sold with the relevant details thereof, the place of the sale and the day and hour in which the auction is to begin and end. Such details are to be held published in two local newspapers. The debtor, creditor or any other interested party may publish and inform, at their own expense, the proposed sale of the vessel by judicial auction.

(d) The decree ordering the judicial sale advertisement shall be served by the court marshal on the debtor. The Court may order that the application requesting the judicial sale or the decree ordering the judicial sale be also served on other creditors who may have obtained a warrant of arrest or a garnishee order.

(e) In the judicial sale of a ship, the auction will not be held in public but the court will give such directions as it may deem proper for their disposal in the manner most advantageous to the interested parties with due respect to the vessel being sold by auction;

(f) The vessel is then sold by the court to the highest bidder;

(g) In turn, the purchaser will pay the price in court within seven days from the date of the final adjudication in the case of sale of ships; and

(h) The court may give an order to ensure the forthwith delivery of the vessel to the purchaser, upon the purchaser giving security as the court may determine to safeguard the rights of third parties.

The law does not impose as a requirement that there be a valuation of the vessel before the auction since vessels constitute a form of movable (as distinct from immovable) property. There is no requirement for a minimum price to be reached for a vessel (over ten metres in length) to be successfully sold by auction.

Nigeria

The key elements include:

a) A party to the action (*in rem* or *in personam*) applies to the court after judgment that the ship be appraised and sold, and that the proceeds of the sale be paid into court.

b) Where the application is granted, the court would usually order that the vessel be either valued by a court-appointed valuer, an independent valuer approved by the court, or by the Admiralty Marshal. However, the court would usually order the Admiralty Marshal to oversee the valuation and the sale of the vessel in question, and to pay the proceeds of sale into court pending the determination of the suit.

c) In granting or refusing the application, the court would usually examine the evidence put forward by the applicant as “good reason” for the court to exercise its discretionary power to order a sale *pendente lite*.

Norway

Please see answer to question 1.1 and 1.4 above. In essence: a creditor submits an application of forced sale to the enforcement court, demonstrating that the conditions for forced sale is fulfilled. The application shall inform of all unregistered rights in the vessel and shall be accompanied by a certificate of ownership and encumbrances. If the court finds that the application may succeed, the court shall serve the application to the owner of the vessel, who is entitled to respond within one month. The court will thereafter decide whether enforcement sale shall take place.

Singapore

See 1.1.

Slovenija

The court shall decide on the proposal for execution of a judgement by sale of a ship by rendering a decision on execution. In accordance with the civil procedure provisions which stipulate the personal serving of writs, the court shall serve the decision on execution by sale to the parties and to all those who, according to data in the documents on the ship subjected to the execution process, hold any lien, right to repayment or right of pre-emption.

South Africa

In order for a ship that has been arrested or attached to be sold, the claimant must bring an application to court for an interim order for the sale of the vessel. In affidavit filed with the application the Applicant must set out the grounds upon which it seeks the Order of Court. A fairly standard Order has been developed by practitioners in conjunction with the South African Maritime Law Association, which Order sets out the powers and duties of, inter alia, the sheriff, the auctioneer, and the claimant, insofar as questions of advertising and notice of the sale are concerned. Also attached to the interim order will be the detailed conditions of sale. After a period of at least 21 days, during which the intended sale order is advertised and the Applicant endeavours to contact as many possibly affected parties as it can, and in the event that the ship-owner does not oppose the sale, the sale order will be confirmed by the court at its discretion. The confirmation that the sale must then be advertised and notice thereof given to the parties that may be affected by that sale. Once the sale has been concluded the Registrar of the High Court is approached to issue the bill of sale.

Spain

The relevant procedural steps are the following:

- Enforcement order.
- Attachment of assets.
- Appraisal by expert of the attached assets.
- Notice of payment.
- Realization by parties' agreement (treaty), sale by expert Agency or public auction.
- Allocation and distribution of proceeds of sale.
- Closing order.
- Deletion from registry.

Sweden

The procedure leading to the enforced sale of a vessel may include the following stages:

- (a) An application to the Authority
- (b) Seizure of and securing the vessel, whereby the Authority takes control of the vessel. If the vessel is already under arrest, additional physical measures may not be necessary to secure the vessel;
- (d) Advertising the sale;
- (e) The enforced sale by auction;
- (f) Distribution of the proceeds.

United States of America

To be sold at a judicial sale, a vessel must initially be seized pursuant to either

Supplemental Admiralty Rule B (attachment) or C (arrest) in a case in which the claimant has a maritime claim against the vessel's owner and/or lien against the vessel, respectively. Following the attachment or arrest of a vessel, a party, the marshal, or another person having custody of the vessel may move for an interlocutory sale of the vessel if the vessel is perishable or liable to deterioration, decay, or injury while in custody; the expenses of keeping the vessel are excessive or disproportionate; or there is an unreasonable delay in obtaining the vessel's release. SUPP. ADM. R. E(9)(a). A vessel may also be sold after the entry of a final judgment against the vessel owner or vessel itself. When a court orders the judicial sale of a vessel, it will issue an order authorizing the sale of the vessel and setting forth the date, time, and place of the sale and any conditions or requirements of the sale, for example, minimum bids, bidding increments, allowance of credit bids, amount of deposit or down payment and deadlines for any deposits or down payments, limitations on who may bid (such as an alien restricted from bidding on a U.S.-flag vessel), methods of payment, and provisions for objections to, and/or automatic confirmation of, the sale. After a court issues an order of sale, public notice of the sale must be given, which is usually done by the U.S. Marshal in accordance with local procedure. As discussed above, the U.S. Marshal typically conducts the sale, which follows the terms of the order of sale. The proceeds of the sale are usually then paid into the registry of the court. Many federal districts have their own local rules governing judicial sales of vessels, which must be followed in those jurisdictions. Likewise, the U.S. Marshal's Service has issued a Manual for United States Marshals, which contains procedures for conducting judicial sales of vessels and other property. See Manual for U.S. Marshals, 2006 AMC 2083 at §§ 3-16, 3-19.

Venezuela

The court appoints experts to establish the value of the vessel. Then, the Court orders to publish a notice of auction. In the publication, the public is informed in relation to the value of the vessel, the date and hour of the auction and the requirement to participate. After that publication, on the respective date, the Court performs the act of judicial auction and delivered the vessel to a legitimate buyer.

2.2 *Is it necessary to provide written notice to the register of ships in which a ship is entered before that ship is sold by way of judicial sale?*

Argentina

Only in respect of Argentinean flag ships. As for foreign flag ships, the judge will notify the consul of the flag state of the judicial sale (Section 593, last para of our Navigation Law).

Australia

No.

Belgium

To the Belgian ships registrar. Not to a foreign Ships register or Ships registrar.

Brazil

Inasmuch as article 686-V requires disclosure of all liens on the attached assets, and, on the other hand, article 12 of Act 7.652 renders it compulsory that all liens be inserted on the ship's register, otherwise they shall not be opposed to third parties, notice to the register of ships is very much required.

Canada

Unless the Federal Court so orders, it is not necessary to provide written notice to the Registrar of Ships, whether Canadian or foreign, in which a ship is entered before that ship is sold by way of judicial sale.

China

Yes. The court shall give a 30-day notice to the ship registrar of the sale. The notice is preferably in writing. Alternatively, Article 33 of MSPC also allows other appropriate methods by which receipt of the notice can be acknowledged. It defines that, "*The maritime court shall issue a notice 30 days before auction of a ship to the ship registrar of the registry state of the ship for auction and to the known maritime lien holders, mortgagees and ship-owners. Such a notice shall contain the name of the ship for auction, time and venue of the ship auction, reasons and grounds for the ship auction, registration of claims etc.. Means of such a notice include written form and other appropriate forms the receipt thereof can be confirmed*".

Croatia

Yes.

Denmark

At the same time as the announcement of the judicial sale is published in the Danish Official Journal and other relevant magazines and newspapers, the relevant registration authorities - in Denmark, the Danish Ships Register/the Danish International Register of Ships - must also be informed. If the ship is not registered in Denmark but in a foreign jurisdiction, the judicial sale must also be published in the country of registration in accordance with local rules for publication of such sales and in any event no later than 1 month before the auction. In this respect an "affidavit" from a reputable local attorney, confirming that local rules regarding announcement of judicial sales have

been met will usually have to be presented to the court. When the judicial sale has been completed the bailiff's court is obliged to inform the Danish registry thereof, cf. the Danish Act on Registration of Ships, Section 13(1).

Dominican Republic

No. The law does not require such provision.

France

Before the ship is sold by way of judicial sale, written notice is not provided to the foreign register in which the ship is entered, but to a special register held by the French customs office at the place of the arrest.

Germany

As outlined above, the court will inform the ship register about the order for judicial sale; the ship register will put this information on record.

Italy

No. Only after the sale, but please see response to question 2.4 regarding the endorsement of the attachment on the ship register (article 650 CN). However, prior notice must be given to the Consul of the foreign State the flag of which the ship is flying.

Japan

It is only necessary for ships registered with the Japanese registry.

Malta

It is not necessary to provide written notice to the Maltese Registrar of Ships before a ship is sold via court auction.

Nigeria

No.

Norway

No. It is not necessary to notify the register of ships before the ship is sold by way of judicial sale. However a certificate of ownership and encumbrances issued by the register shall be enclosed to the application for forced sale when submitted to the court.

Singapore

No.

Slovenija

Only in case if the sold ship is registered under Slovenian flag.

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South Africa

There is no requirement in the Act or the admiralty rules for the Applicant, the auctioneer or the court to provide written notice, or otherwise advised, the Register of Ships in which the ship is entered that the ship is being sold by judicial sale.

Spain

Affirmative.

Sweden

Yes. If the vessel is registered abroad, that register will also be notified.

United States of America

U.S. law does not require written notice to be provided to the register of ships in which a ship is entered before a ship may be sold by way of judicial sale. The notice requirements for judicial sales are discussed, above, in Answer to Question 2.1. U.S. law imposes additional and greater notice requirements on a party that arrests a vessel, however, at the time of the seizure. In a civil action to enforce a preferred mortgage lien or another maritime lien *in rem*, U.S. law provides:

(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to:

- (A) the master or individual in charge of the vessel;
- (B) any person that recorded under section 31343(a) or (d) of this title an unexpired notice of a claim of an undischarged lien on the vessel; and
- (C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

46 U.S.C. § 31325(d); see also SUPP. ADM. R. C(4).

Venezuela

Yes, before the execution of the judicial decision, according to article 122 of the Commercial Maritime Law.

2.3 Is it necessary to provide written notice to the registered ship-owner before a ship is sold by way of judicial sale? And, is there any procedure by which the registered ship-owner may challenge the sale of the ship? If yes, please explain in detail.

Argentina

Yes, apart from the general notice referred to in 2.1. above, the law does require that a written notice of auction sale be served on the registered ship-owner, who will have five days to file any of the only five defences admissible that he may rely upon. Any party to a judicial sale of a ship, including but not limited to the registered ship-owner of either a national or foreign flag ship, may apply for the nullity of the auction within five days from the date of the auction. Should the request for nullity be granted by the judge, all the other parties to the judicial sale, the auctioneer and the successful bidder will be given five days to challenge the request for nullity as from the date of receiving the written notice.

Australia

No, there is no requirement to provide written notice of a judicial sale to a registered ship-owner before a ship is sold. However, in circumstances where a registered ship owner does become aware of the judicial sale and is aggrieved by that process then s/he can file a notice of appearance in relation to the *in rem* proceedings as well as a formal application (a Notice of Motion) together with a supporting affidavit seeking that the sale order be varied, suspended or set aside. This application would be heard in open Court.

Belgium

The registered shipowner is informed at many occasions (see 2.1.). Any person may oppose to the judicial sale at various moments in the lengthy judicial sales process. The Court ordering the judicial sale has authority. Opposition does not seem possible for those who are creditors of the debtor (art. 1515 J.C.) on the ground of such relationship.

Brazil

If the registered owner is the debtor, yes, by virtue of article 687 para 5 of the Procedural Code. If not, the matter remains for construction. Article 698 of the Procedural Code requires notice to the “direct landlord”. By way of analogy, perhaps this privilege could be extended to the registered owner.

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And, yes: the registered owner, if he is not the debtor himself, may challenge the judicial sale at any time during the enforcement proceedings and within five days from the auction, but prior to the issue of the certificate of property, by way of the so-called “stay from third parties” (art. 1048 of the PC).

Canada

No. The minimum requirement under the Federal Court Rules is that the ship must be served with the “*in rem*” legal proceedings and the ship owner or other interested party has 30 days to appear and defend the ship’s interests should it choose to do so. It is not required to serve the ship owner personally. To defend the ship, a party who has an interest in the ship applies to the Court for permission to intervene and appear or defend on behalf of the ship. If no one appears at any stage to defend the ship’s interest, the claimant may proceed without notice (“*ex parte*”) and obtain default judgment against the ship alone which will include a direction that if the judgment debt is not paid, then the ship is to be sold, and payment is to be made out of the proceeds of sale. The ship-owner may apply to set aside the default judgment and/or set aside the Order of Appraisal and Sale, and/or challenge the actual sale. In the event that the ship owner is served personally, or instructs legal counsel to seek leave to intervene on the ground that it has a proprietary interest, then the claimant is required to serve on that legal representative all of the legal proceedings to be filed into court and to give notice of its intentions with respect to the ship, whether with respect to seeking judgement, an order for the appraisal and for sale of the ship, directions for the sale of the ship, conduct of the sale, and seeking Court approval for the transfer of ownership of the ship. The ship owner has the right to contest and challenge each step being undertaken by the claimant.

China

Yes. The notice should also be made to the registered ship-owner in writing. The ship-owner may challenge and apply for a review of the ruling of the judicial sale within 5 days of receipt of the notice during which period the sale should be suspended. The maritime court shall then review the ruling and make a decision within 5 days of receipt of the challenge for review.

Croatia

The writ of execution needs to be delivered to the ship-owner. If the ship-owner is not in Croatia or the ship-owner’s seat is unknown, the court will appoint the master as the ship-owner’s attorney-in-fact, and shall deliver the writ of execution to the master. The ship-owner may challenge the sale of the ship by lodging an appeal against the writ of execution. The ship cannot be sold before the writ of execution has become final (meaning that the ship-owner has failed to lodge an appeal within 8 days or the appeal has been duly lodged but dismissed by the appeal court).

Denmark

At the same time as the first announcement of the judicial sale, the bailiff's court must inform not only the registered owner of the ship by registered mail but also all parties with registered encumbrances over the ship. However, only if the addresses of these persons/companies are apparent from the transcript of register provided by the creditor claimant, cf. the AJA, Section 544(2). If no addresses are listed, or if the registered letters are returned without a forwarding address, the court is not obligated to perform any further investigations in such respect. The debtor can not challenge the judicial sale but he can appeal the attachment levied on the ship to the ordinary courts within 4 weeks after the attachment. This is not to be confused with the 4 week appeal period after the judicial sale auction. If the attachment is appealed, the bailiff's court will have to wait for the decision from the ordinary courts before it can proceed with the judicial sale, cf. the AJA, Section 542(2). The debtor can also avoid the judicial sale at any time during the process by either paying the creditor claimant in full or making an agreement with him and the other entitled parties. *Third parties* that wish to object to the judicial sale on the argument that they have conflicting rights on the ship are not bound by this 4 week deadline to appeal the attachment. If for example a third party objects that he is the actual owner of the ship or has a conflicting mortgage right which entitles him to dispute the judicial sale, the bailiff's court will have to suspend the judicial sale process, even after the expiry of the 4 week period, until the objection has been considered, cf. the AJA, Section 499.

Dominican Republic

In principle yes, but notice served upon the vessel's master and/or her local agents has been usually accepted by the Court. The registered shipowner can always appeal to the sentence designating the new owner, within the regular time period for the appeals (one month after the sentence has been duly served). Additionally there are exceptional civil & commercial (common) law recourses such as "casacion" (appeals before the supreme court of justice) and civil revision or review ("revision civil"); the latter barely used.

France

As aforesaid shortly, it is necessary to provide written notice to the registered shipowner before a ship is sold. The shipowner might challenge the sale of the ship before the Court in charge of the auction, by disputing, for instance, the title of condemnation or the enforceable character of this title, the conditions and validity of the service of summons to pay and/or of the procès verbal of judicial sale.

Germany

According to §§ 3, 8, 22 ZVG, the order for judicial sale will be served to the debtor, i.e. the registered ship owner, by the court. According to § 30a ZVG,

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the judicial sale may be suspended in case the debtor can prove that he is able to pay the claim amount within 6 months. According to § 765a German Civil Procedure Code (*Zivilprozessordnung-ZPO*), the judicial sale may also be suspended in case of extraordinary hardship (e. g. danger to the life of the debtor, risk of committing suicide). Generally, orders rendered by the local court competent for execution are subject to appeal with the competent regional court.

Italy

Yes. The registered owner must be informed at different, subsequent stages of the proceedings. Please see response to question 2.1. Prior to the commencement of the proceedings, the owner may file an opposition against the notice referred to in response to question 2.1 under (i), on the ground that the creditor does not have an enforceable title. Subsequently, the owner may file an opposition against any of the different steps of the expropriation (articles 615 to 617 CCP). Reference to such provisions is made in article 667 CN.

Japan

It is necessary. The court will serve a copy of the court order commencing the judicial sale of the ship on the debtor and the ship owner. Upon application, the court will order the bailiff to serve the written notice, and the bailiff will serve the documents on the master who is deemed to have capacity to represent the ship owner. The ship owner or the debtor may contest the court order commencing the judicial sale, on grounds that the claim or maritime lien (or other basis to the judicial sale of the ship) does not exist or has been extinguished or that the procedure of arrest and/or judicial sale is against the law.

Malta

Our Code of Organization and Civil Procedure provides that a definitive judgement may be enforced (through a judicial sale therefore) after two days from the day of its delivery. However, the enforcement of any other executive title, such as a mortgage, may only take place after the lapse of at least two days from the service on the debtor of an intimation for payment which must be made by a judicial act. In the latter case after two days from the service of such an official letter on the debtor the execution creditor may then proceed with the application requesting the judicial sale of the vessel. Upon being served with the request of the execution creditor for the vessel to be sold by judicial auction, the Shipowner may file a response opposing the request of the execution creditor and the Court will then issue a decree. In practice, the decree ordering the judicial sale by auction of a vessel is served on the Shipowner. The proposed sale of the vessel would also be advertised in at least two newspapers. The auction or adjudication shall be suspended upon

the demand of the debtor with the consent of the creditor or upon the demand of the creditor with the consent of the debtor or upon any lawful impediment. In case the suspension for the auction is demanded by the debtor or a third party, without the consent of the creditor, the demand shall not be entertained unless contemporaneously with such demand, a deposit is made with the registrar of a sum which in his opinion is sufficient to cover the expense occasioned by the suspension.

Nigeria

No. He would normally be a party to or aware of the litigation preceding the sale. He can make an application to the court before the sale is effected to halt the sale or to contest the right to sell. The Supreme Court has rejected an application to set aside a sale.

Norway

Yes. The registered ship-owner will be the defendant in the application for forced sale. Before the court decides whether an application of forced sale shall be successful, the application shall be served to the owner of the vessel, who is entitled to present his side of the case within one month. In his response, the ship-owner may demonstrate or argue that the conditions for forced sale are not fulfilled – the claimant/creditor has no claim or the claim is paid, the claim has not fallen due etc. The master has authority to receive this on behalf of the owner. The owner of the vessel shall be informed of that if the vessel is in the judicial district of the court, she may not leave the judicial district of the court, and that if the vessel is abroad at when the court decides that forced sale shall take place, the owner is obligated to ensure that the vessel shall arrive at a named place in the country. This information shall also be given to the Master of the vessel.

Singapore

After the order is made for the judicial sale of a ship, no. Orders of the judicial sale of the ship may be reversed in special circumstances, e.g. when the owner can show that the order was made under a misapplication of facts or when the owner is prepared to put up security for all claims against the ship. Whether the order for judicial sale will be reversed lies entirely in the Court's discretion.

Slovenija

There is no such requirement to provide a written notice to the registered ship-owner before a ship is sold by way of judicial sale. But together with the decision on enforcement by sale of a ship which is entered in the register of ships, the court shall order *ex officio* that the decision be noted in the register of ships.

South Africa

No, there is no formal requirement, but it is most unlikely that an Applicant will succeed in its application for the judicial sale of a ship if it has not notified the owner, operator and/or manager of the ship of the pending application for the sale of the ship. The Court must be satisfied that proper notice has been given both with regard to the action that underlies the application for the sale of the ship (such as the *in rem* arrest of the ship, of the attachment of the ship or the arrest of the ship for pre-judgment security). In practice the application papers are served on the vessel in the event that the owner has no legal representation. The ship-owner is perfectly entitled to oppose the application at any time prior to the interim order being made final (and possibly at any time up to the actual sale of the ship, if good cause is shown) and all the ship-owner need do is file a notice of opposition subsequently supported by an affidavit setting out its grounds for opposing the application for the sale of the ship.

Spain

Negative. Challenge can be made by a claim for ownership where the true Owner is not the Defendant or by third-party action of prior right of claim than the one shown by the Plaintiff.

Sweden

The registered ship owner will be notified before a ship is sold. An arrest, or a seizure, or an auction or a distribution of proceeds may all be appealed separately. The appeal time is – with few exceptions – three weeks. Appeals go to the District courts, but shall be sent or handed over to the Authority. Decisions by the District courts may in their turn be appealed to a Court of Appeals and under certain conditions to the Supreme Court.

United States of America

Written notice need not necessarily be given to the registered owner of a ship before a judicial sale. In fact, U.S. law does not currently require notice of the arrest of the vessel to be provided to the vessel's registered owner. Notice to the master or individual in charge of the vessel is deemed sufficient to notify the vessel's owner of the arrest. A person who asserts a right of possession or an ownership interest in an arrested vessel may, however, file a statement of right or interest in the vessel and an answer following the arrest of a vessel. SUPP. ADM. R. C(6). If so, the vessel owner should receive notice of all subsequent pleadings and other filings in the action, including any motion for the interlocutory sale of the vessel. Importantly, an "appearance to defend against an admiralty and maritime claim with respect to which there has been issued process *in rem*, or process of attachment and garnishment, may be expressly restricted to the defense of such claim, and in that event is not an

appearance for the purposes of any other claim with respect to which such process is not available to be served.” Id. E(8). A registered owner of a vessel that has been arrested may challenge the arrest of the vessel. Supplemental Admiralty Rule C provides: “Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules. . . .” Id. E(4)(f). If the vessel owner does not succeed in vacating the arrest, it may seek to obtain the release of the vessel upon the posting of substitute security. See id. E(5). In addition, if grounds exist for opposing the sale, the vessel owner may file a motion seeking to prevent the sale or, otherwise, proposing particular terms for the conduct of the sale (to the extent that the other parties will not agree to the inclusion of those terms in the order of sale).

Venezuela

Yes, before the execution of the judicial decision, according to article 122 of the Commercial Maritime Law. The judicial sale might be challenged by a repossession action, under article 584 of the Civil Procedure Code and by a constitutional protection action.

2.4 Is it necessary to provide written notice to the registered mortgagees, the known holders of maritime liens and/or the known holders of other charges in respect of the ship before the ship is sold? And, is there any procedure by which the mortgagees and/or the aforesaid holders may get access to the distribution of the proceeds of the sale of the ship? If yes, please explain in detail.

Argentina

Yes. Pursuant to the procedure provided for in the Code of Procedure as informed in 2.1 (ii), registered mortgagees will be demanded to file their original titles. In addition, preferential creditors will also be informed of their respective lawsuits through judges. In case of a foreign flag ship, written notice will be given to the consul of the flag state.

Australia

No, there is no requirement to provide written notice specifically directed to known registered mortgagees, holders of maritime liens or charges. However, there is a general requirement pursuant to the Admiralty Rules³¹ for the

³¹ Rule 73 and 74. Rule 73 provides that: “Where a ship or other property has been arrested in a proceeding, a person who has obtained a judgment in a Court (including a judgment in a court of a foreign country) against the ship or property, being a judgment that is enforceable in a court of Australia, may apply to the court for determination of the order of priority of claims against the ship or property”.

Admiralty Marshal to publish, by way of a prescribed Notice of Application to Determine Priorities, the fact that a ship is about to be sold or has been sold. As stated in paragraph 2.1. above, the notice includes a paragraph inviting anybody who has a claim against the ship or the proceeds of sale to bring an action to enforce the claim within a specified period of time.

Belgium

Notice to registered mortgagees:

There is a notice to the creditors inscribed in the Belgian ships register. This includes the arrestors of the vessel as well as the hypotheque holder. There is no notice to other creditors of a pending judicial sale if they are unknown. Any person having an interest must make him selves known to the acting Court appointed public officer. This will by law result in him being and remaining informed and consequently having the possibility to intervene. The Belgium experience is that any (foreign or not) person having a financial interest in the vessel is perfectly well aware of any judicial sale in its respect. The information in respect of the sale is so abundant, the possibility for anyone to intervene in the judicial process so often, that the rights of defence of any party having an interest is sufficiently covered. The market actually seems to consider the Belgian system overly protective for the shipowner and quite some voices are asking for a substantial simplification of the sales process.

Distribution of proceeds of sale: the settlement of the “concursum” of creditors created by the sale of the rem, the vessel:

Once the vessel has been sold and payment has been received the *public officer* appointed by the judge to proceed with the sale must by Statute Law file a request before the Commercial Court for the appointment of a *fund distributor*³². By Statute Law³³ the Commercial Court appoints a lawyer, usually one that is specialized in maritime law. Please note that the Commercial Court is another court then the Court of First Instance of which the Arrest Court is a department. The Commercial Courts which have an extensive maritime case load (Antwerp, Ghent, Bruges, Brussels) have specialized Maritime Chambers consisting out of a professional judge assisted by two lay judges working professionally in maritime or transport related sectors. This *fund distributor* will inform all known creditors. Creditors are known if they have are inscribed in the Belgian Ships Register or. All the ones having made known their interest to the appointed judicial officer proceeding with the sale will also be informed. The *fund distributor* will publish his appointment and the requirement to file claims in two newspapers indicated by the judge³⁴. Within three months of the sending by

³² Art. 1658 J.C.

³³ Art. 1658 J.C.

³⁴ Art. 1660 J.C.

the fund distributor of his letter to known creditors, creditors must file their claims failing which they lose all rights on the price of the sale³⁵. Creditors which are not aware of the existence of the fund lose their right against that fund if they do not file within these three months. Particular formalities are, at sanction of losing rights, to be respected³⁶. Once the deadlines for filing claims have passed the Court appointed fund distributor files an advice to the Court together with a list of claims in the court which appointed him³⁷. All creditors (having filed a claim against the fund) are entitled to have a copy of the documents and advice as filed in court³⁸. The Court will determine a day for hearing at which parties can oppose to the fund distribution as proposed by the fund distributor. The court will decide after hearing the parties. Appeal is possible. Appeal to the Supreme Court is eventually also possible. The distribution of the fund created by the sale of the vessel will occur as per the 1926 Liens and mortgages convention (which is incorporated into Belgian Statute law) or the law of the flag of the vessel. Once there is a final decision the distribution will occur as per court order.

Brazil

Yes. The mortgagees by virtue of article 1501 of the Civil Code and the remainder under the aforesaid article 698 of the Procedural Code, provided that they have a lien or registered attachment. The creditors shall get access to the distribution of proceeds by way of a creditors' claim, where they will be entitled to sharing the proceeds in accordance with their respective priority, namely: priority liens, the plaintiffs in the particular enforcement and, as to the balance, the remaining creditors, bearing in mind the chronological order of their attachments (art. 711 of the PC).

Canada

No. There is no requirement to give notice to either lien holders or registered mortgagees unless claimants have filed Caveats whether against the release of the vessel from arrest, or against payment of money on deposit in court and have given notice to the other parties to the action. The Federal Court has the power, but not the duty, to order, as a precaution, that the sale be advertised in a number of media, international as well as local, depending on the value of the vessel, allowing the parties who have maritime liens or mortgages or other claims to learn of the impending sale of the vessel; also, to order in the same advertisement, the availability of a claims process, the delays for filing of claims and the procedure to be followed for determining the rights of

³⁵ Art. 1661 J.C.

³⁶ Art. 1661 J.C.

³⁷ Art. 1663 J.C.

³⁸ Art. 1664 J.C.

parties. No claim may be filed and assessed if filed after the delay set forth in the Court's Order. There exists a procedure for determining the rights of claimants against the proceeds of sale, their ranking, and for payment out of the funds an deposit.

China

Yes. The notice should be made to these parties as well. The procedure for challenging the court's ruling of judicial sale is the same as above. The mortgagees and/or the known holders of other charges shall register their claims relating to the ship which is to be auctioned with the maritime court during the notice period, failing which rights to the proceeds of the sale of the ship shall be deemed as to be voluntarily waived.

Croatia

The writ of execution needs to be delivered to the registered mortgagees, the known (according to the information provided by the applicant in the judicial sale proceedings, i.e. the party seeking judicial sale) holders of maritime liens and/or the known holders of the right to participate in the distribution of the proceeds. The registered mortgages may participate in the distribution of the proceeds without any formality. The holders of maritime liens may participate in the distribution of the proceeds only if they lodge their claims on or before the hearing set for the sale of the ship.

Denmark

At the same time as the first announcement of the judicial sale, the bailiff's court must inform not only the registered owner of the ship by registered mail but also all parties with registered encumbrances over the ship. However, only if the addresses of these persons/companies are apparent from the transcript of register provided by the creditor claimant, cf. the AJA, Section 544(2). If no addresses are listed, or if the registered letters are returned without a forwarding address, the court is not obligated to do further or perform any further investigations in that respect. Although this is not clear from the AJA we are the opinion that written notice should also be given to known holders of maritime liens and other charges in respect of the ship. However, if this is not done it is doubtful if there would be any consequences of not doing so. Only registered encumbrances are on the face of things required to be notified. Others are assumed to be notified through the official announcements in the Danish Official Journal etc. When the auction is completed and the buyer has paid the purchase price to the bailiff's court, the funds (less costs) must be paid to the creditor claimant forthwith, unless there are other creditors. If there are other creditors, the court must prepare a draft account stipulating the distribution of the funds to the various creditors who are entitled to participate in the "priorities contest". The court must inform all known claimants within

Denmark of the judicial sale and the sale proceeds obtained. The order of priority is such that the costs (as determined by the court) of the attachment (and arrest, if relevant) and the judicial sale must be settled first before the claims secured by maritime lien, mortgages and other rights over the vessel, cf. the DMA, Section 76(2). Thereafter the claims that are entitled to participate in the priorities contest are the same claims that would be recognized as basis for attachment under Section 478 of the AJA, cf. Section 1.3 above. Maritime liens are defined in the DMA, Section 51(1) and rank in that order and take priority over all other charges on a ship, including rights of retention. A maritime lien arises without registration and cannot be registered. Furthermore it remains attached on the ship even if title passes to other persons or if there are changes in registration. A maritime lien will only be extinguished by a judicial sale, cf. the DMA, Section 76, or by becoming time barred (one year after the lien arose). Claims from right of retention of a person who has built or repaired the ship will rank after maritime liens but before mortgages and other charges, cf. the DMA, Section 54(2). Such rights are not (and can not be) registered anywhere. Thereafter comes registered mortgages on the ship, whether Danish or foreign. Foreign mortgages will be registered provided they live up to certain requirements specified in the DMA, Section 74. Priorities of mortgage are determined in accordance with the date and time of their registration. Other claims, including maritime claims (which are not also maritime liens) have no specific priority in case of a judicial sale. They will only be paid if the sale proceeds exceed the combined sum of the secured claims. If anything is to be paid to such claims, which would most often not be the case, priority will be determined by order of the date and time at which they arose. The bailiff's court must inform all known claimants who are entitled to participate in the "priorities contest" that the draft account for the distribution of the sales proceeds has been prepared and is available for inspection. This information is announced the same way as the announcement of the judicial sale. Strictly speaking, with respect to foreign creditors, publication in the Danish Official Journal is sufficient, but usually the court will send the draft to all relevant creditors both in Denmark or abroad (unless they were present at the auction). The funds will be distributed in accordance with the draft account unless objections are received within 4 weeks, cf. the AJA, Sections 554-555. If any dispute arises which can not be solved by mediation through the bailiff's court, the parties will be referred to solve their dispute through the ordinary courts. The deadline for initiating such legal proceeding is 14 days from the referral. The bailiff's court will hold on to the sale proceeds until the dispute is resolved. If a creditor who has not received notice of the draft distribution document approaches the court with objections after the expiry of the 4 weeks deadline but before the funds have been distributed, the bailiff's court may still resume its treatment of the matter in order to consider these objections. However, have the funds already been distributed, other creditors who believe

they should have received a part thereof can only direct their claims against the persons/companies that have received the funds. Upon expiry of the appeal period (4 weeks) the judicial sale will be binding for those creditors or otherwise entitled persons/companies that were not legally entitled to object to the judicial sale in the first place, cf. the AJA, Section 552. Their security interests in the ship are extinguished by the judicial sale and their claims are converted in to simple claims against the purchase price paid. Rights that were not covered by the purchase price are deleted as such from the ship. Only the rare occasions where there are creditors or otherwise entitled persons / companies that were legally entitled to object to the judicial sale in the first place, may the validity of the judicial sale be questioned. If for example it turns out that the ship was not owned by the debtor from which the attachment was levied there may under certain circumstances be grounds to annul the judicial sale through appeal to the ordinary courts.

Dominican Republic

No. The mortgagees and/or other creditors may enter/intervene into the procedures before they are completed/concluded, that is, before the public auction of the vessel is concluded, and even after the same, they could always approach a judge to withhold the sale and/or the execution of the sentence with sufficient merits, under the special procedure of “referimiento” (“referee” = an expedited urgent special procedure).

France

It is legally necessary to provide a written notice to the registered mortgagees, only when the ship is French flag flying. There is no such provision when the ship is flying a foreign flag. French Law does not provide any service of a written notice to the known holders of maritime liens and/or the holders of other charges, except the fact that the details of auction to happen, must be published in a legal publications sheet. All these creditors may get access to the distribution of the proceeds of the sale, by notice of their claim to the Auction Court clerk office, before or just after the auction.

Germany

According to §§ 9, 41 ZVG, all registered creditors will be informed about the auction date by the court. Also the creditors later known to the court have to be informed about the auction date by the court. In the course of the fourth week prior to the auction date, the creditors will be informed which creditor filed the application for judicial sale of the ship and regarding which claim. According to § 27 ZVG, other creditors may enter into the judicial sale proceedings. Although this will not be registered in the ship register, the joining creditors have the same rights as the (original) creditor who initiated the proceedings.

Italy

Pursuant to article 650 CN, the attachment must be immediately endorsed on the ships register, as this is a way to make the commencement of the expropriation proceedings public. Pursuant to article 653 CN, the application for the sale of the ship must be served upon the registered mortgagees and the creditors that have joined the proceedings and, pursuant to article 655 CN, also the order of sale must be served upon the registered mortgagees that are entitled to join the proceedings. The proceeds of the sale are distributed amongst the creditors that are parties to the proceedings, according to their priorities (article 680 CN).

Japan

The court shall provide written notice to the creditors who, prior to the arrest, registered their mortgage, lien, other security, temporal attachment for their claims or claim to provisional ownership. If such a creditor's address is overseas or unknown, the court will make a public notice to them. Any tax authorities claiming for unpaid tax will also be served with such a notice. These creditors will be treated as the creditors who are entitled to receive a share of the proceeds of the judicial sale of the ship. The other creditors will not receive the court's notice, and they will have to apply for another judicial sale or claim a share of the proceeds in order to be included in the distribution of the proceeds of the judicial sale of the said ship.

Malta

The application of the execution creditor requesting the judicial sale of the ship would normally be served on the shipowner and on any other person who may also have filed an arrest warrant against the vessel and who therefore is known to the execution creditor. The execution creditor does not have an obligation to notify the registered mortgagee of the proposed sale of the vessel by judicial auction. The execution creditor may not even know that there is a registered mortgage over the vessel since the vessel to be sold by judicial auction may be a foreign vessel. However, it is expected that the debtor would inform the mortgagee that procedures are underway for the vessel to be sold by judicial auction. In terms of Maltese law, where a ship has been sold pursuant to an order or with the approval of a competent court within whose jurisdiction the vessel was at the time of the sale, the interest of the mortgagees as well as of any other creditor in the ship shall pass onto the proceeds of the sale of the ship. The purchase price of the vessel will be deposited in Court. Under Maltese law, when there is deposited money in respect of which more than two parties allege claims of preference or priority, the Court will publish a notice calling upon all interested parties to put in their respective claims within a specified time period. There will then be a hearing for the trial of the claims. Maltese procedural law has specific provisions as to how the trial of competing claims is to proceed, on written pleadings, etc. Further information may be provided

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on request. Where the fund is insufficient to cover all its debts, unless there are privileged claims, any competing creditors falling within the same heading will rank ratably on the fund.

Nigeria

Currently, no. The provision of Order 14 Rule 2(2) of the AJPR that the sale shall be by public auction of the vessel 21 days after advertisement shall have been placed in two National Daily Newspapers is to ensure that all interested parties are put on notice of the Court's order for sale of the vessel. The notification to all parties will put them on notice and they are at liberty to join the proceedings as 3rd Party interveners who have an interest in the vessel or the proceeds from the sale of the vessel.

Norway

If the court decides that a forced sale shall be conducted by an assistant, the assistant shall as soon as possible notify all known holders of rights in the vessel, such as registered mortgages and known holders of maritime liens, that a forced sale will take place. The notification shall inform the receivers of who the applicant for the forced sale is and his claim. The owner of the vessel shall be requested to give information of any rights in the vessel that does not appear in the register of ships. The claimant and other holders of rights in the vessel shall be requested to inform the assistant of the amounts of their rights, including interests and costs. The distribution of proceeds shall be determined by the court according to the following principles:

1. Court fee and Remuneration to the assistant (if the forced sale is conducted by an assistant of the court).
2. Costs related to the buyer's acquisition of the vessel which shall not be for the buyer's account.
3. The holders of rights are paid in the order of their ranking (first priority mortgage is paid first, then second priority mortgage etc.). In general the priority of different rights is determined by the date of registration.

Singapore

No. Yes, provided that the mortgagees of such holders plead and pursue their claim in the Singapore Court and there is sufficient sale proceeds remaining after payment to the Claimants who have priority over such mortgagees or holders.

Slovenija

It is not necessary to provide written notice to the registered mortgagees, the known holders of maritime liens etc. Nevertheless these persons have the right to participate in the preceding and file objections if their rights are not respected. Such objections may be both substantive and/or procedural in nature.

South Africa

There is no specific requirement in the Act or the admiralty rules for the mortgagee bank to be advised of the sale. Given the general obligation upon the Applicant to advise all parties that may be affected by the arrest, the Applicant may make enquiries regarding the presence or otherwise of a mortgagee bank. In the absence of any indication that there is a mortgagee bank the arresting party is not obliged to undertake a search of the ship's register in order to establish whether or not a mortgage has been registered. At the end of the day the court must be satisfied that suitable notice has been given to all parties it deems should receive notice. The ability of the mortgagee bank, or any lien holder, to have access to the proceeds of the sale of the ship will depend upon the ranking of that parties claim as determined by Section 11 of the Act. A copy of Section 11 of the Act is attached marked Annexure "B".

Spain

Affirmative. Subject to application of the rules of the MLM 1993, under the general rules such notice may be given on request of the Plaintiff.

Sweden

The known maritime creditors will be notified. Holders of mortgages over Swedish vessels may register their names and addresses with the Register of Ships and are then certain to be notified about any sale of the vessel. The Authority will call a separate meeting for distribution of proceeds. That meeting will not be held until the time to appeal against the auction has expired. Six weeks after the auction is a normal time. At the meeting, the balance of the purchase price will normally be received from the buyer. The proceeds will be distributed in principle in accordance with the List of Creditors. The proceeds are not actually paid out to the creditors until the time to appeal against the distribution has expired, i.e. three weeks later.

United States of America

Please see the Answers to Questions 2.2 and 2.3.

Venezuela

Yes, before the execution of the judicial decision, according to article 122 of the Commercial Maritime Law.

2.5 Following the judicial sale of a ship, will a document such as an order or a certificate be issued to the purchaser by the court that conducted or controlled the judicial sale of ship, to the effect that the ship is sold free of all mortgages, liens, charges and encumbrances, or that the purchaser has acquired a clean title of the ship from the judicial sale?

Argentina

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Yes, the judge will deliver a resolution stating that with the deposit of the full price of the sale deposited in the court bank, the purchaser will have acquired a clean title of ownership (free of all mortgages, liens, charges, or encumbrances).

Australia

The Bill of Sale that is entered into between the Court and the purchaser of the ship will ordinarily include a paragraph stating that the Admiralty Marshal has power to make the transfer and certifies that according to Australian Law the effect of the judicial sale is that the ship has been “freed from all liens, encumbrances and debts whatsoever” up to the date of delivery of the ship.

Belgium

By Statute Law (Book II, Title 1, art. 37.3 Maritime Code) liens and mortgages cease to exist by the judicial sale. The buyer receives from the judicial officer entrusted with the sale of the vessel an act of adjudication which is an authentic act and a proof of buying which refers to the circumstances of the judicial sale, the price paid³⁹ and the consequences thereof. If the vessel and charges related to it are registered in the Belgian Register the deregistration of the vessel and charges (liens and Hypotheques) on it must be asked. It is referred to Question 4.5 for further details.

Brazil

Yes (please see item 2.1. above). The clean title of a ship is provided for in law (article 477 of the Commercial Code).

Canada

After the auction is held and the Sheriff selects the top bidder or finds the private buyer, the sale is subject to the approval of the Federal Court, and if approved, is confirmed by an order of the Court declaring the new buyer to be the owner of the ship free of any liens under Canadian maritime law and directing the Sheriff to sign and issue a Bill of Sale to the buyer on payment of any balance of sale price owing.

China

The ship auction committee will sign a sale completion certificate with the purchaser upon the delivery of the ship to the purchaser. The purchaser then can use the certificate to register his title to the ship with the ship registrar.

Croatia

After the purchaser has paid the purchase price and met any special conditions of sale, and after the adjudication decree has become final, the court will issue an order that the ship be delivered to the purchaser, that the

³⁹ Art. 1656 J.C. and 1557 J.C.

purchaser be entered in the ship register as the owner of the ship and that all encumbrances and charges be deleted from the ship register.

Denmark

When the buyer's bid is accepted at the auction he gains right to the ship as legal owner. However, this right is always conditioned within specified deadlines upon (i) the judicial sale not being annulled in appeal, (ii) no one requesting a second auction in order to try and get a better sale price, and (iii) fulfillment of the terms specified for the sale (typically specified by the creditor claimant subject to approval by the bailiff's court). Only when the buyer provides the bailiff's court with adequate documentation that these conditions are met will the buyer be entitled to a title deed issued on the ship in his name, cf. the AJA, Section 580. Such deed will usually be in the form of a written endorsement to the transcript from the bailiff's court in which it is stated that the ship has been sold by way of a judicial sale. This can then be used to register the transfer of title in the Danish Ships Register/the Danish International Register of Ships. In order to document to the bailiff's court that the conditions of the judicial sale have been met it is common that the buyer must, inter alia, provide the bailiff's court with written letters of consent (or receipts) from the circle of entitled creditors that have received coverage in whole or in part out of the purchase sum. In our experience it is not common for the bailiff's court to issue a certificate stating explicitly that the ship has been sold free of all mortgages, liens, charges and encumbrances and/or that the buyer has acquired clean title to the ship. Accordingly, the buyer can not expect to receive a formal Bill of Sale.

Dominican Republic

The Court will issue a sentence which includes the mentioning that the vessel was sold/adjudicated to the new owner/purchaser, "free of all liens, debts and encumbrances".

France

Under French Law (Law n° 67-5, January 3rd, 1967, article 40) the judicial sale of a ship provides for the extinction of all liens on her and makes her clean and free, of all mortgages, charges, liens and encumbrances, so that the purchaser has acquired a clean title of the ship. The purchaser receives from the Court an enforceable copy of the auction judgment.

Germany

Following the judicial sale of the ship, the court that conducted the judicial sale will issue an order stating whether the purchaser has actually acquired a clean title in the ship by means of the judicial sale ("Zuschlagsbeschluss", see above).

Italy

Article 664 CN provides that, after payment of the balance of the purchase price by the successful bidder, the court shall issue an order instructing the ships registrar to discharge and delete all mortgages.

Japan

If the ship subject to judicial sale is registered in Japan, the court order or certificate to that effect is not necessary, since the court shall order the ships' registry to change the ownership and to delete all registered mortgages or other encumbrances. Although maritime liens may not be registered in Japan, such liens will also be extinguished by the provisions of the *Civil Enforcement Law*. If the ship subject to judicial sale is registered overseas, there is no provision in Japanese law with respect to a court certificate or order to the same effect. However, in practice, the courts issue a certificate to the overseas register of ships to certify *as under Japanese law* (i) that the ship was sold by judicial sale to the successful bidder, and (ii) that there are no longer any mortgages or other encumbrances over the ship. It seems that this practice follows Article 12 (5) of the 1993 Convention, although Japan has not ratified the said Convention.

Malta

Following the judicial sale of a ship, a bill of sale would be issued in favour of the purchaser reflecting the fact that the vessel has been sold free from all encumbrances.

Nigeria

Yes. A Bill of Sale and title document will be issued by the admiralty marshal confirming that the vessel is sold free of all encumbrances.

Norway

If the buyer of the vessel so requires, the court shall issue a bill of sale for the vessel. The bill of sale shall inform if any encumbrances has been taken over by the buyer (as per agreement between the buyer and the creditor). Further, the deed shall list the rights in the vessel that has been overturned/deleted as a consequence of the forced sale process. When the buyer register this bill of sale in the register of ships, the rights that has been overturned/deleted, shall be deleted from the vessel's record.

Singapore

No.

Slovenija

Unless the court, at the proposal of the parties and with the consent of rightful claimants, rules otherwise, the buyer shall take over the ship being subjected to the execution process free of all liens and property encumbrances.

South Africa

Following the judicial sale of a ship a bill of sale is issued by the Registrar of the High Court and this is delivered to the purchaser or its agent.

Spain

An order of sale will be issued to the purchaser for the purposes of a new registration, though with no mention of “free from liens, charges and encumbrances”.

Sweden

Promptly after the payment of the purchase price, the buyer will obtain full legal title to the vessel. Evidence of that title will be given by a protocol of the auction signed by the Authority. This legal title is the best title a buyer can obtain under Swedish law, in the sense that the sale extinguishes any pre-existing rights against the vessel, except for those mortgages which survive with the buyer’s consent.

United States of America

U.S. law does not expressly provide for the issuance of such a document. However, U.S. law does expressly provide that a sale by a district court in an *in rem* action brought to enforce a preferred mortgage lien acts to terminate any lien, maritime lien or possessory common law claims in the vessel. 46 U.S.C. § 31326(a). The order of sale ordinarily states that the vessel will be sold as is, where is, and free and clear of any claims, liens, maritime liens, rights *in rem*, rights of redemption, or encumbrances whatsoever. The Bill of Sale issued by the U.S. Marshal to the confirmed purchaser may also recite that the vessel has been sold free and clear of all liens. The standard form Bill of Sale by Governmental Entity Pursuant to Court Order or Administrative Decree of Forfeiture (CG-1356) (Rev. 06/04) does not contain this language. Nevertheless, the form’s instructions state: “Use ‘Remarks’ section above if vessel is not sold free and clear”

Venezuela

Yes, according to article 573 of the Civil Procedure Code a certificate should be issued to the purchaser by the court that conducted the judicial sale of ship. Additionally, article 118 of the General Marine Law, that certificate will be considered the Title of the vessel.

2.6 Is there any difference in procedure if the ship to be sold by way of judicial sale is a foreign ship? If yes, please highlight the difference in detail.

Argentina

No, there is no difference in procedure. The only difference is that whilst local registered mortgagees and preferential creditors are directly notified of the

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judicial sale of a national ship, foreign registered mortgagees and foreign holders of maritime liens attached to a foreign flag ship should be notified thereof through the notice that the Consul of said flag state may send to the competent authorities of such country.

Australia

No.

Belgium

There are no differences in procedure in as far as the sale or the rights themselves are concerned. There are some slight differences in as far as the manner of notification is concerned, but those have been explained above.

Brazil

Under the procedural point of view, there is none. However, there are some requirements to fulfil at the Register of Ships and the Customs for the purposes of hoisting the Brazilian flag, or for export.

Canada

No.

China

No.

Croatia

The differences almost do not exist. They are few and of technical nature only.

Denmark

As mentioned under Question 2.1 the procedural rules apply to both Danish and foreign registered ships. If the ship is not registered in Denmark but in a foreign jurisdiction, the AJA requires that the judicial sale is also announced in the country of registration in accordance with their local rules for publication of judicial sales and in any event no later than 1 month before the auction. It should also be noted that in the typical situations where the basis for the levying of the attachment is a foreign mortgage it is always a condition that enforcement of the mortgage would be possible in the relevant foreign registration country or under the applicable law. In order to document this the creditor claimant usually provides the bailiff's court with a confirmation or legal opinion from a reputable foreign attorney in such respect.

Dominican Republic

No. There is no substantial difference, except for the manner as to properly serve the notices/bailiff's/procedural acts, and the time frame within which the foreign defendant may reply to the plaintiff and attend the court hearings based upon how distant the foreign defendant is from the court knowing the

merits of the case. The farther, the longer time periods, as per local civil procedural law.

France

There is no difference in procedure if the ship to be sold by way of judicial sale, is a foreign ship.

Germany

Firstly, the “lowest bid provision” (“Vorschrift über das geringste Gebot”, § 44(1) ZVG) is not applicable. According to this provision, the bid shall at least cover both the costs of the judicial sale proceedings as well as higher ranking claims. Secondly, the notification obligations are more strict as – together with the notification about the auction date – all creditors must be advised to lodge their claim at the beginning of the auction date at the latest.

Italy

Reference to the judicial sale of a foreign ship is only made in article 653, pursuant to which the request for the sale must be notified to the Consul of the State the flag of which the ship is flying.

Japan

In the case of judicial sale of foreign ships:

- (1) The court will not order the registration of the ship’s arrest or make notice of the arrest to the overseas register of ships.
- (2) The court will serve the order to commence judicial sale to the debtor and the overseas owner, but in most cases service on the owner is made through the agency of the master.
- (3) The court will not order the register of ships to change the ownership after a judicial sale. There is no provision in Japanese laws to oblige the court to notify the overseas register of ships of the change in ownership effected by the judicial sale.

For details of what happens in practice, please see the above Answer to 2.5.

Malta

There is no difference in procedure if the ship sold via judicial sale is a foreign ship.

Nigeria

No.

Norway

The Norwegian Enforcement Act, which regulates the process of forced sale is only applicable on foreign vessel in some circumstances. Forced sales can not be effectuated against a foreign vessel on innocent passage through Norwegian territorial waters unless the claim has arisen during the innocent passage or in

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the purpose of performing the innocent passage. Further, forced sales can only be effectuated against foreign vessels that are performing work/services on the Norwegian continental shelf if the claim is related to the work/services carried out within an area where Norway has jurisdiction. Likewise, forced sales can only be effectuated against foreign vessels located in the Norwegian economic zone if the claim is related to work/services performed in an area where Norway has jurisdiction. In the above circumstances, the procedures for forced sales as previously described generally apply to foreign vessels.

Singapore

No.

Slovenija

There is no difference.

South Africa

There is no difference in procedure whether a ship be a local flagged ship or a foreign flagged ship.

Spain

The foreign ship judicial sale will follow the rules of the MLM 1993 (if the Convention applies).

Sweden

The rules for sales of vessels registered in Sweden apply by express provision also to sale in Sweden of vessels entered in foreign ship registers.

United States of America

No, except that a foreign vessel may be sold pursuant to different conditions than a U.S.-flag vessel and the arrest of the vessel may be subject to different notice requirements. There are also variations in certain lien priorities with respect to foreign vessels in U.S. courts. *See* Answers to Questions 2.1 and 2.2, above.

Venezuela

No.

3. *The effects of judicial sales of ships*

Note: It is observed that once a ship is sold by way of judicial sale, certain legal effects or consequences will follow. For example, in many jurisdictions, the ownership of the previous ship-owner will cease to exist and/or the mortgages, maritime liens and other charges attached to the ship prior to the sale will be extinguished. The questions in this group are intended to collect as much as possible information regarding your jurisdiction and to identify the most common legal effects or consequences which a judicial sale of ship may bring about. It might be worth mentioning that the questions

in this group should be understood and answered without regard for any foreign elements.

3.1 *What legal effects or consequences would a judicial sale of ship bring about?*

Argentina

The successful bidder will acquire 100 percent of the ownership on the auctioned vessel, free of all mortgages, liens, charges or encumbrances.

Australia

The judicial sale of a ship extinguishes all maritime liens or statutory charges in relation to the ship and, in effect, gives the purchaser an unencumbered title to the ship⁴⁰.

Belgium

All liens and mortgages on the vessel cease to exist⁴¹.

The claims of the creditors inscribed on the vessel sold are transferred onto the price of adjudication⁴².

The employment of the master ceases to exist⁴³.

Brazil

Either the total or partial satisfaction of credits claimed against the owner, or the transfer of property of the vessel.

Canada

See responses to question 1.1 and 2.5. Other than international comity, there is no guarantee that foreign Courts or regulatory bodies will honour or respect the terms of a judicial sale in Canada.

China

A judicial sale of ship will give the purchaser of the ship a clean title to the ship.

Croatia

Apart from the effects indicated under 3.2 and 3.3 below, the judicial sale is a valid legal basis to acquire ownership in a ship. A party that purchased a ship by way of judicial sale will be entered as the owner of the ship on the basis of a special order issued by the court.

Denmark

⁴⁰ *Readhead v Admiralty Marshal, Western Australia District Registry* (1998) 87 FCR 229 per Ryan J at 242.

⁴¹ Art. 37,3° Maritime Code.

⁴² Art. 1655 J.C.

⁴³ Art. 1558 J.C.

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The effect under Danish law of a judicial sale is the same for Danish as for foreign vessels. The bailiff's court in Denmark is internationally competent to perform a judicial sale whether or not the ship is Danish or foreign registered. The only requirement is that the ship is within the Danish territory. When the buyer's bid is accepted at the auction he gains right to the ship as legal owner. However, this right is always conditioned within specified deadlines upon (i) the judicial sale not being annulled in appeal, (ii) no one requesting a second auction in order to try and get a better sale price, and (iii) fulfillment of the terms specified for the sale (typically specified by the creditor claimant subject to approval by the bailiff's court). Only when these conditions are met will the buyer be entitled to a title deed issued on the ship in his name, cf. the AJA, Section 580. He can then also demand that the registered encumbrances that did not receive coverage out of the sale price are deleted from the ship's registry. The deletion of encumbrances that did not receive coverage does not in itself mean that the underlying claims of the relevant creditors are extinguished. If for example an uncovered mortgage is deleted, the mortgagee creditor may demand that the mortgage be converted into an ordinary paper document which will function as an original debt instrument for the debt and which may then serve as basis for other attachments against the debtor.

Dominican Republic

Designating a new owner of the vessel, who receives the ship "free of all liens, debts and encumbrances".

France

Answer to the following questions 3.2 to 3.4.

Germany

As described above, German law provides for judicial sale of ships by auction through a court. The court will determine the winning bid by court order (*Zuschlagsbeschluss*). The court order transfers, with effect from the date and time of its pronouncement, ownership of the ship to the winner of the auction.

Italy

Title of the ship is transferred to the buyer and all encumbrances are extinguished, their holders being entitled to claim payment from the proceeds of the sale according to their priorities.

Japan

Under Japanese law, the successful bidder will obtain the ownership of the ship, free of all mortgages, liens and the other encumbrances, once he pays the bid price. 3.2 Will a judicial sale of ship extinguish the previous

ownership?

Malta

A judicial sale would bring about the transfer of ownership of the vessel in favour of the Buyer.

Nigeria

Title to the ship is transferred to the buyer and all encumbrances are extinguished. All parties having an established claim against the vessel will be entitled to claim payment from the proceeds of the sale according to their position in the list of priorities.

Section 34 [1] and [6] of the Merchant Shipping Act 2007 provide:

“[1] Whenever a change occurs in the registered ownership of a ship registered in Nigeria, the change of ownership shall be endorsed on the certificate of registration by the Registrar or appropriate officer at any port at which the ship arrives after the registration officer is advised of the change by the Registrar at the ship’s port registry.”

“[6] Where the ownership of any ship registered in Nigeria is changed, the Registrar at the ship’s port of registry may, on the application of the owner of the ship, register the ship anew, notwithstanding that a new registration is not required under this Part of this Act.

Norway

A judicial sale of ship has as a main rule the effect that the buyer becomes the new owner of the vessel and all claims not covered by the purchase price are extinguished as encumbrances on the vessel. However, non-monetary claims registered with better priority than the claim which is basis of the forced sale, remain as encumbrances on the vessel and have to be respected by the buyer.

Singapore

Clean title to the purchaser, loss of ship to the shipowner, transfer of maritime claims to the sale proceeds, fund constituted in Court to be paid out according to Court ordered priority.

Slovenija

As a rule if the court does not decides otherwise at the proposal of the parties, the ship is sold without debts.

South Africa

A judicial sale passes property in the ship from the previous owner to the new owner and has the effective extinguishing any mortgage, lien, hypothecation or any other charge of any nature whatsoever (Section 9(3)) of the Act.

Spain

New ownership and removal of the claim/mortgage giving rise to the judicial sale.

Sweden

The title obtained by a buyer of a vessel at the auction in a judicial sale is the best title that a buyer can obtain under Swedish law, in the sense that the sale extinguishes any pre-existing rights against the vessel, except for those mortgages which survive with the buyer's consent. That title is unaffected by any knowledge or bad faith in the part of the buyer with regard to pre-existing rights. It is, in fact, the only way in which a buyer can be quite sure that maritime liens do not attach to a vessel that he acquires. That is true for vessels registered in Sweden and also for the purchase at a judicial sale in Sweden of a vessel registered abroad, as long as the title is challenged in Sweden.

United States of America

There are various types of judicial sales of ships, including sale by order of the bankruptcy court, sale by order of a federal court pursuant to exercise of its admiralty powers *in rem* over the vessel, sale by a court on the basis of a civil or criminal forfeiture, and sale by a state court (which can have no admiralty *in rem* process). We answer only with respect to the sale by order of a federal court exercising *in rem* admiralty powers. Such a sale would transfer full legal title to the purchaser and discharge all lien claims, which would be transferred upon sale to the sale proceeds received by the Court.

Venezuela

The ownership of the previous ship-owner will cease to exist and the mortgages, maritime liens and other charges attached to the ship prior to the sale will be extinguished.

3.2 Will a judicial sale of ship extinguish the previous ownership?**Argentina**

Yes. See above.

Australia

Yes.

Belgium

Yes.

Brazil

Yes.

Canada

Yes, under Canadian law.

China

Yes.

Croatia

Yes.

Denmark

Yes, the buyer will become the legal owner of the ship. However third parties in good faith may dispute the judicial sale for certain limited arguments e.g. defective title (in Danish: *vanhjemmel*). For example there could be situations in which a third party who was not informed of the judicial sale could demand that the judicial sale be annulled through appeal if he could prove that the debtor against whom the attachment was levied, and the judicial sale effected, was in fact not the real owner of the ship. If a third party believes that he has the right to vindicate the ship from the buyer may proceed against the buyer by appealing the auction within 4 weeks or by bringing legal proceedings against the buyer through the ordinary courts. It is probably most correct to say that the rights of the buyer are wholly conditioned upon no appeal being raised against the judicial sale for reasons known or unknown during the process of the judicial sale. However, if a judicial sale have been conducted properly and justifiably, any rights of third parties, e.g. the rights of a judgment creditor whose rights are secured on the debtor's property through another attachment or a lower priority mortgagee, are extinguished. A third party whose rights - contrary to that of a rightful owner - could not in themselves prevent the judicial sale, but did not get a his share of the sale price through the auction because he had not filed his claim with the bailiff's court and is therefore not known, has no claim against the buyer. However, this third party may, depending on the circumstances - have a claim in damages against the creditor claimant who initiated the judicial sale. Again, the unsecured claim of the said third party against the debtor is unaffected by the judicial sale. It is only the security interest in the ship which is lost. Special circumstances become relevant if the ship is sold out of an insolvency estate or the estate of a deceased person. Such situations could entail situations about invalidation/annulment (in Danish: *omstødelse*) for the protection of creditors. This is not considered here.

Dominican Republic

Yes, indeed.

France

A judicial sale extinguishes the previous ownership.

Germany

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The judicial sale by auction will transfer ownership to the winning bidder and extinguish the previous ownership (cf. 3.1).

Italy

Yes.

Japan

Yes.

Malta

Yes.

Nigeria

Yes. A judicial sale extinguishes the previous ownership. The sale of a vessel on the order of a competent court will confer good title to the new owner free from previous maritime claims.

Norway

Yes, provided that the buyer has paid the purchase price. The ownership passes when the buyer pays the purchase price.

Singapore

Yes.

Slovenija

Yes.

South Africa

Yes.

Spain

Affirmative.

Sweden

Yes.

United States of America

Yes.

Venezuela

Yes.

3.3 Will a judicial sale of ship extinguish all mortgages, liens, charges or

encumbrances attached to the ship before the sale?

Argentina

Yes. See above.

Australia

Yes.

Belgium

Yes but some formalities at the Ships Register are necessary to have charges (such as Hypotheques) on the vessel be deregistered. It is referred to Question 4.5 for further details.

Brazil

Yes.

Canada

Yes, under Canadian law those mortgages, liens and encumbrances, whether Canadian or foreign, which are recognized and subject to Canadian maritime law are considered at law to be extinguished without any judicial declaration being necessary, but again there is no guarantee that a foreign Court will respect the terms of a judicial sale in Canada.

China

Yes.

Croatia

Yes, except those that the purchaser agreed to assume with the consent of their holders.

Denmark

Judicial sale through forced auction is a sale in the interests of the secured creditors by which the sale price obtained is distributed amongst the owners of the encumbrances in the ship by their individual order of priority as far as the sale proceeds stretch. This means that uncovered charges/encumbrances are extinguished/lost on the ship (except those assumed by the buyer), including maritime liens, cf. also the Danish Maritime Act (hereinafter referred to as the "DMA"), Section 76(1). Those charges/encumbrances that after the judicial sale were uncovered can be deleted from the ship's registry at the request of the buyer when he has fulfilled the auction sale terms and the appeal period of 4 weeks has expired without any appeals having been initiated. It is up to the bailiff's court to decide which rights can not be covered by the sale price and if the buyer has fulfilled the auction sale terms. However, the decision to delete the uncovered encumbrances from the ship will be made by the registration authority who may make certain demands to

the buyer in that respect.

Dominican Republic

Yes, indeed.

France

The judicial sale of a ship provides for the extinction of all liens on her and makes her clean and free of all mortgages, charges, liens and encumbrances, so that the purchaser has acquired a clean title of the ship.

Germany

Mortgages, liens, charges or encumbrances that (i) rank ahead of the claims of the creditor who has initiated the judicial sale and (ii) are either registered in the ship register or have been lodged with the court prior to the auction will not be extinguished by the judicial sale. All such rights are disclosed to the bidders, which can take them into account while bidding. All other mortgages, liens, charges or encumbrances are extinguished upon pronouncement of the court order. The above does not apply to ships not registered in Germany; in case such a ship is auctioned by a German court, all mortgages, liens, charges or encumbrances are extinguished upon pronouncement of the court order determining the winning bid.

Italy

Yes.

Japan

Yes, under Japanese law.

Malta

Following a judicial sale, the interest of the mortgagees as well as of any other creditor in the ship shall pass on to the proceeds of the sale of the ship. Maltese law provides for special privileges which rank prior to ordinary claims. Even these special privileges are extinguished by a judicial sale.

Nigeria

Yes. Section 74(1) of the Merchant Shipping Act 2007 provides that all claims or liens on a ship except those assumed by the purchaser shall cease to attach to the ship. Maritime liens attached to the ship prior to its judicial sale are therefore extinguished by the sale of the vessel.

Norway

All monetary claims in the vessel will be extinguished once the buyer becomes the owner of the vessel after a forced sale (unless the buyer and the creditor have agreed that the buyer shall take over encumbrances on the vessel, as explained above under 2.5). Only non-monetary claims (i.e. pre-emption rights) registered

with priority over the claim which is the basis for the forced sale will remain as encumbrances on the vessel and will have to be respected by the buyer. Non-monetary claims with the same priority as the buyer or with priority after the buyer will remain as encumbrances on the vessel unless the claim is overturned in order to raise sufficient cover for claims with better priority.

Singapore

Yes.

Slovenija

If the court does not decide otherwise, yes.

South Africa

Yes.

Spain

Negative. Prior in right and previous charges may not be extinguished and the purchaser will have to accept subrogation into the liability to discharge them.

Sweden

Yes, except for those mortgages which survive with the buyer's consent.

United States of America

Yes.

Venezuela

Yes.

3.4 Will the purchaser acquire a clean title over the ship, good against the whole world, through the judicial sale of ship?

Argentina

Yes. See above.

Australia

Yes. In this regard, the English Law position, to the effect that a sale by the Marshal pursuant to an order of a Court of Admiralty made within jurisdiction confers on the purchaser an unencumbered title which is good against the whole world has been accepted by the Australian Courts⁴⁴.

Belgium

⁴⁴ *Readhead v Admiralty Marshal, Western Australia District Registry* (1998) 87 FCR 229 per Ryan J at 242 who accepted this "statement of principle" which had recently been endorsed by Sheen J in *The "Cerro Colorado"* [1993] 1 Lloyd's Rep 405.

Recognition of foreign judicial sales of ships

Yes. But some formalities at the Ships Register are necessary to have charges (such as Hypotheques) on the vessel be deregistered. It is referred to Question 4.5 for further details. Whether or not Belgian court decisions such as the one to sell the vessel and the subsequent sale of that vessel as per Court order are recognized elsewhere cannot be commented upon. Also see Question 4.

Brazil

Yes.

Canada

Yes, but subject to recognition and enforcement by other foreign jurisdictions.

China

Yes.

Croatia

Yes.

Denmark

Ordinarily, yes - subject to recognition of the Danish judicial sale in the relevant foreign country. However, it should again be noted that the rules in the AJA about extinction of claims/encumbrances that did not obtain coverage through the judicial sale will only apply if the judicial sale has been conducted properly and justifiably. There are situations in which vindication could become relevant despite the judicial sale. If for example it turns out that the ship belonged to someone else than the debtor against whom attachment was levied, or a creditor with rights in the ship has not been properly notified or invited to an auction meeting, such third parties could possibly claim an annulment of the judicial sale.

Dominican Republic

Yes, in principle. It would be however always advisable for the owner to change the name of the ship and to obtain at least a provisional/temporary local registration/flag.

France

Yes, for the whole world, any auction judgment is only a fact as long as it has not received the "exequatur". But such a judicial decision is to be considered as a legal fact and nobody cannot fail to recognize it.

Germany

The court order determining represents a title over the ship good against the whole world. The terms of the auction, including any remaining claims (cf. 3.3) will be listed therein.

Italy

Yes.

Japan

Yes, under Japanese law. However, Japanese law does not have any specific provision with respect to a clean title to the ship against the whole world.

Malta

Yes.

Nigeria

Yes.

Norway

Even though the buyer will become the owner of the vessel, he will have to respect non-monetary claims that were registered with priority over his claim (which was the basis for the forced sale) as well encumbrances that he has agreed with the creditor to take over.

Singapore

Under Singapore law, yes.

Slovenija

If the court does not decides otherwise, yes.

South Africa

Yes.

Spain

The title over the ship may be good but not always clean.

Sweden

Sweden would expect Swedish judicial sales to be recognized abroad and titles acquired thereby to be as good as they are domestically. No particular problems are reported in the legal literature regarding the recognition of Swedish judicial sales, or their legal consequences, abroad. The international conventions or EC legislations or recognition, to which Sweden is party or which are directly applicable in Sweden do not cover judicial sales. Judicial sales in Sweden will, of course, be scrutinized abroad under general principles of public policy, due process of law, etc., but if no particular reason exists for invalidating the sale on these grounds, the title acquired on Sweden should be recognized.

United States of America

Yes.

Venezuela

Yes.

3.5 *Will a judicial sale of ship automatically annul the previous registration*

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of the ship (including the registration of the ship's nationality, ownership, mortgage, bareboat charter, etc.)?

Argentina

No. The judicial sale of a ship will not automatically annul the previous registration. The Register will only delete the previous registration and proceed to the registration of the new owner upon receiving a court order, as is explained in the next reply. If a foreign flag ship is auctioned locally, the Register will also require that some administrative and customs formalities be met if the ship is intended to be registered by the new owner with the National Register of Ships.

Australia

No, the purchaser is required to lodge the bill of sale and a declaration of transfer with the Registrar of Ships within 14 days of the execution of the bill⁴⁵. An extension of time can, however, be granted in special circumstances.

Belgium

No. The registration remains as long as a deregistration has not been asked. Some formalities will need to be performed by the new owner if a Belgian registration is concerned. In as far as foreign registration is concerned we cannot comment. Also see Questions under 4. The judicial sale will be inscribed in the Belgian ship's Register. Beware an inscription is not the same as a registration.

Brazil

Under article 22 of Act 7,652/88, the register shall be annulled, *inter alia*, following evidences of the transfer of property or by virtue of definite court ruling.

Canada

No. The judicial sale only operates to transfer title. The burden of registering that transfer of title and seeking cancellation of any other charges registered against the vessel (whether of ship's nationality, ownership, mortgage, bareboat charter, etc.) is on the buyer in the same way as if the sale had been a private sale between two parties in the normal course of business and subject to the requirements and legal impediments imposed by the law, foreign or Canadian, governing that ship registry.

China

⁴⁵ Section 36(2) of the *Shipping Registration Act* (Cth) 1981

No. The purchaser ought to register his ownership with the ship registrar with the sale completion certificate signed by the ship auction committee.

Croatia

There is no automatism. Please see 3.6 below.

Denmark

No. Under Danish rules on registration of ships, all rights over ships must be *registered* in order to obtain protection against claims from, and acquisitions by, third parties. In case of Danish registered ships (or foreign registered ships which are to be registered in Denmark after the judicial sale), the buyer should file proper documentation with the Danish Ships Register/the Danish International Register of Ships that he has acquired title to the ship immediately after the judicial sale. There are no formal requirements to such documentation. However, it must be clear that ownership has been transferred to the buyer. It is possible to register a judicial sale in Denmark - whether Danish or foreign - with the Danish Ships Register/the Danish International Register of Ships by filing a copy of the records (transcript) of the relevant bailiff's court. It follows from the DMA, Section 76(4) that if a Danish ship is sold by foreign judicial sale, maritime liens, mortgages and other rights are extinguished if at the time of the judicial sale the ship was located in the country where the judicial sale took place and under the condition that the sale was conducted in accordance with the law of such country (*lex fori*) and the Convention. The same conditions apply with respect to deregistration of ownership, cf. the DMA, Section 17(3). The foreign country is not obliged to have ratified the Convention as long as it lives up to its rules. Typical examples of non-recognition would be, lack of jurisdiction, fraud and failure to observe the important procedural formalities on e.g. announcement, summons/notification and distribution. It should be noted that the registered owner of a Danish ship is always obliged to inform the Danish registry about any circumstances which entail the deletion of the ship immediately after the owner has become aware thereof. Non-compliance therewith is a punishable offence.

Dominican Republic

No. The ship's nationality/flag remains the same, as well as her name. However, not the ownership, which is changed to the new owner. Thus, it is always advisable that the new owner deletes any previous registration, unless he/she desires to keep the same, in which case he should notify such registry that the vessel has indeed changed to the new owner. An outstanding charter, whether a voyage, time and/or bareboat charter is extinguished/annulled.

France

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French Law does not provide for an automatic annulment of the previous registration of the ship, even if the auction judgment transfers the ownership of the ship to the purchaser.

Germany

The competent court conducting the judicial sale of a ship registered in a German register will inform the German register of ships of the court order and the register of ships will make such entries into the register, in particular concerning ownership, as are warranted. If the ship, after pronouncement of the court order, continues to fulfil the criteria for entry into the German register of ships, the ship will remain entered in the German register of ships. If the ship does not fulfil the criteria for entry in the German register of ships, the ship will be deleted by the register unless a mortgage on the ship remains (cf. 3.3). In this case, the ship will be deleted only if the mortgagee consents to the deletion. Otherwise, the register will contain an entry stating that the ship has lost the right to fly the German flag or that the ship has its port of registry outside of Germany with the effect that the ship is deleted with the exception of the mortgage.

Italy

If the ship is purchased by a bidder who is entitled to keep it under the Italian flag, the registrar will endorse the name of the successful bidder as the new owner of ship rather than annulling the previous registration. If the bidder is not entitled (because of the lack of the nationality requirements set forth in Article 143 CN) – or does not wish – to keep the ship registered in Italy, the registrar must issue a certificate of deletion of the ship from the Italian register, stating that the ship is deleted free from any registered encumbrances.

Japan

Yes, by court order in relation to ships registered in Japan. In relation to foreign ships, the buyer will initiate the registration procedure before the overseas register of ships.

Malta

The Maltese Registrar of Shipping would have to be informed of the judicial sale in order to take action to close the vessel's register.

Nigeria

A judicial sale will not automatically annul the previous registration of the ship. However the new Owner, armed with the order of judicial sale shall be at liberty to apply and follow the set down procedures and requirements for the relevant registry to rectify, cancel or re-register the ship under the flag or Registry he desires.

Norway

No. The new owner of the Vessel must register the ownership, based on a bill of sale issued by the court.

Singapore

No, not unless the purchaser from the judicial sale notifies the Registry.

Slovenija

This issue is not regulated by our maritime code.

South Africa

No, in terms of the conditions of sale, – the purchaser bears the obligation of arranging for the deletion of the ship from its erstwhile Register.

Spain

Not automatically, but the Registrar will receive due notice.

Sweden

If a Swedish-registered vessel is to be registered elsewhere, the buyer will be able to obtain a deletion certificate on the basis of the protocol on the same or the following day. No court or register holder will arrange for deregistration. If the vessel is registered abroad, it is, of course dependent on the procedures of the pertinent foreign register as to how fast deregistration can be obtained.

United States of America

It is unclear whether the U.S. would regard the prior foreign registration as not valid. Evidence of deletion would be required to permit documentation under U.S. law. If a U.S.-flag vessel were sold at a foreclosure sale, the consequent change in ownership would invalidate the prior documentation. If application for redocumentation under U.S. flag were intended, deletion from U.S. flag would not be required. Purchaser would file the U.S. Marshal's bill of sale, a certified copy of the U.S. District Court's order to sell and a certified copy of the U.S. District Court's order confirming the sale. 46 C.F.R. Section 67.77

Venezuela

Yes.

3.6 *On production of a document such as an order or a certificate issued by the court that conducted or controlled the judicial sale of the ship, will the register of ships delete the previous registration of or deregister the ship (including the registration of the ship's nationality, ownership, mortgage, bareboat charter, etc)?*

Argentina

Recognition of foreign judicial sales of ships

Yes, provided that the court order includes (a) the full style (name and address) of the new owner; (b) the order for the lifting of all the arrests or embargoes placed on the ship, and (c) the order that the ship be registered as owned by the successful bidder, free of all mortgages, liens, charges or encumbrances out of debts incurred before the new owner takes the possession of the auctioned ship. Pursuant to Section 13 of Law 13170 (The National Register of Ships bylaws), in case of a judicial sale of a ship the Register will not proceed to the registration of the new ownership until the judge orders the lifting of all the embargoes and encumbrances on the auctioned ship.

Australia

No. An application needs to be made to the Supreme Court of a State or Territory to amend the records of the Register in accordance with the Shipping Registration Act (Cth) 1981.

Belgium

The deregistration of the ship has to be requested. In case the owner would not or cannot proceed with the deregistration court action is required. The deregistration of existing charges on the vessel can be done only:

- In agreement with the beneficiary of the charge, or
- By court order. The court must order the deregistration of the charge if the charge itself does not exist⁴⁶. Charges cease to exist after the forced sale⁴⁷.

Brazil

Yes. Please see item 3.5.

Canada

In Canada, for a Canadian ship, the production of the order of sale and Bill of Sale confirming the sale free of any liens to the new buyer is sufficient for the Canadian Registrar of Ships, to register transfer of ownership and delete the previous registration of a mortgage and/ or deregister the ship.

China

Yes. Based upon the application of the purchaser coupled with the sale completion certificate, the registrar is obliged to deregister the ship in question. Of course, the former owner also assumes the responsibility to deregister his ownership with the ship registrar himself. However, failure of the former owner's deregistration does not affect the transfer of the title of the ship.

Croatia

⁴⁶ Art 35,2 and 36 Maritime Code juncto 94 and 95 of the Code on Hypotheques.

⁴⁷ Art 37.3 Maritime Code.

The court will order that the purchaser be registered as a new owner in the existing ship register. The court will also order the deletion of all mortgages and other register encumbrances (except those assumed by the purchaser with the consent of their holders). The ship register will observe the court order. The court will not deal with the ship's registration. The issue of whether the ship under the new owner qualifies for a Croatian-registered ship will be dealt with the ship registrar.

Denmark

If the judicial sale has been conducted in a foreign country the requirements in the DMA, Sections 76(4) and 17(3) will always apply, cf. question 3.5 above. The Danish Ships Register/the Danish International Register of Ships will expect to receive adequate documentation that these requirements have been complied with and that ownership has been transferred to the buyer. If the judicial sale has been conducted in Denmark, the Danish Ships Register/the Danish International Register of Ships will expect to receive the title deed from the buyer in the form of an endorsed copy of the records (transcript) of the relevant bailiff's court stating that the ship has been sold through a judicial sale, cf. question 2.5 above.

Dominican Republic

Usually yes, and that is what they should do indeed.

France

No answer under French Law, specially because no French Judge has authority on foreign register of ships administration.

Germany

Cf. 3.5.

Italy

Yes.

Japan

Yes, for a judicial sale of ship in Japan in relation to Japan-registered ships following the production of an order from the Japanese Court that conducted the sale. In the case of an overseas judicial sale, the Japanese register of ships will not accept the certificate or order of judicial sale from a foreign court as a document to change the register in Japan. Those who wish to change the register in Japan need to obtain the judgment from the Japanese court (not a judgment to recognise and/or enforce a foreign judgment) to change the registered ownership and/or to delete the registered mortgage(s) or make any other change to the Japanese register pursuant to a foreign judicial sale.

Malta

Recognition of foreign judicial sales of ships

Where in virtue of a judicial sale of a Maltese flagged vessel, the purchaser of a ship is not a person who is qualified to own a Maltese ship, upon obtaining knowledge or on being given notice of the judicial sale, upon receiving copies of the proceedings of the judicial sale certified to the satisfaction of the Maltese Registrar of Ships, the Registrar shall make an entry thereof in the vessel's register and the register of the ship shall be closed except in so far as related to any unsatisfied mortgages entered therein. However, at the same time, Maltese law provides that following a judicial sale, the interest of the mortgagees as well as of any other creditor in the ship shall pass onto the proceeds of the sale of the ship.

Nigeria

Yes.

Norway

Upon presentation of a bill of sale issued by the court, the new owner will be registered as owner of the vessel and the previous registered rights will be deleted to the extent the bill of sale demonstrates that the right/encumbrances cease to attach to the vessel.

Singapore

No. The operative document will be the Bill of Sale.

Slovenija

Yes.

South Africa

Usually the bill of sale as issued by the Registrar of the High Court is sufficient to allow the new owner to register the ship in the New Registry.

Spain

Affirmative, though the Registrar will not delete outstanding mortgages.

Sweden

The buyer will be able to obtain a deletion certificate on the basis of the protocol of the auction on the same or the following day but he must care for deregistration himself.

United States of America

Please see Answer to Question 3.5

Venezuela

Yes.

3.7 On production of a document such as an order or a certificate issued by

Synopsis of the replies from the Maritime Law Associations, by Francesco Berlingieri

the court that conducted or controlled the judicial sale of the ship, will the register of ships register the ship in its registration or enrolment regardless of whether the previous registration of the ship is deleted or not?

Argentina

Pursuant to Section 53 of the Argentinean Navigation Law, the Register will register the full style of the new ownership out of a judicial sale of a foreign flag ship carried out by a local court regardless of whether the previous foreign registration of the ship is deleted or not.

Australia

No. An application needs to be made to the Supreme Court of a State or Territory to amend the records of the Register in accordance with the Shipping Registration Act (Cth) 1981.

Belgium

In principle this is not possible. A ship cannot be registered in the Belgian Register of ships if there is no proof that the previous registration of the ship has been deleted previously. To register a ship in Belgium it is also necessary to provide:

- the status of encumbrances as stated in the foreign Register (certificate of encumbrance of non-encumbrance);
- the identity of the last owner as stated in the foreign Register.

If the foreign Register of ships refuses to hand over those documents, this is a problem that has to be solved:

- by the laws of the state that conducted the judicial sale; and/or
- by the laws of the state where the ship has been previously registered.

Brazil

No.

Canada

No. Canadian law requires a deletion certificate from the (foreign) ship register where the ship was registered regardless of whether the owner obtained title through a judicial sale or a private sale, and that deletion certificate must certify that “the foreign register records the vessel as being free and clear of all encumbrances”.

China

Yes.

Croatia

This question cannot be answered without regard to the foreign element. In the context of Croatian law, this question makes sense only assuming that the

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judicial sale has been carried out abroad and registration requested by the purchaser in the Croatian ship register. The Croatian ship register will not register a ship until the previous (foreign) registration is deleted. It may allow a so-called pre-registration, pending delivery of the foreign deletion certificate.

Denmark

It is not possible under Danish registration law to register a ship under Danish flag if the ship is simultaneously registered somewhere else. Consequently, the Danish Ships Register/the Danish International Register of Ships conditions any registration - including registration based on documentation from a bailiff's court in either Denmark or abroad - upon receipt of confirmation from the previous registry that the ship has been (or will be) unconditionally deleted (deletion certificate). It follows from the DMA, Section 15(2), that in special circumstances a ship can be registered even though a deletion certificate or other confirmation has not been received from the previous registry. This is a rare exception to the main rule and will not be used if the country of previous registration is also a party to the Convention.

Dominican Republic

If so requested by the new owner, yes. The registration of the new ownership in such local registry will make cease the previous one.

France

See answer to 3.6.

Germany

A ship previously in the German register of ships and remaining in the German register of ships will remain registered (cf. 3.5). In the case of a ship in a foreign register of ships subject to a judicial sale before a German court, the German register of ships will recognize a court order transferring ownership, however it will not register the ship if it has not been deleted in the previous register. For the recognition of foreign orders or certificates in this respect, please see section 4 hereof.

Italy

See the response to question 3.1.

Japan

In the case of a judicial sale in Japan of a ship registered in Japan, the Japanese court will order the register of ships to change the ownership from the previous owner to the successful bidder and to delete the previous registration at the same time. In case of a judicial sale overseas of a foreign ship, and if the successful bidder wishes to register the ship in Japan, he first

need to obtain Japanese flag for the ship, for which he need the certificate of deletion of the ship's registration from the overseas register in order to change the registration of ownership from the previous ship owner to the successful bidder. In the case of a judicial sale overseas of a Japanese-registered ship, please see answer to 3.5 and 3.6.

Malta

If the vessel's register has not been closed, it is likely that the Registrar of Shipping will annotate the vessel's register to indicate the judicial sale on being provided with a certified copy of the court order in virtue of which the ship was sold as well as a certified copy of the bill of sale transferring the vessel to new owners. If the vessel's register has already been closed prior to the judicial sale (most likely in terms of Section 29(2)(a) for unpaid registry fees), we do not believe that the Registrar would update the vessel's register to indicate that the vessel has been sold by judicial auction if subsequent to closure, the Registrar of Shipping had to be informed of the judicial sale. (We can double check this with the Maltese Registrar of Shipping – if required).

Nigeria

Yes.

Norway

A prerequisite for deletion of rights in the vessel is that the new owner can produce a bill of sale issued by the court. If such a bill of sale is produced, previous rights in the vessel will be deleted to the extent the bill of sale demonstrate that the right/encumbrance has ceased to attach to the vessel.

Singapore

No.

Slovenija

The previous registration of the ship shall be deleted.

South Africa

We are unaware of any instances where the bill of sale was not recognized by a foreign registry.

Spain

Double registration is an international problem. Under MLM 1993, the answer should be affirmative.

Sweden

No, the ship must be deleted from the previous registration before any registration is allowed in the Swedish Register of Ships.

United States of America

Please see Answer to Question 3.5.

Venezuela

Yes.

4. Recognition of legal effects of foreign judicial sales of ships

Note: It is observed that ships may be sold by way of judicial sale in one jurisdiction, while recognition of such sale may be required in another jurisdiction. Non-recognition of foreign judicial sales of ships may result in a number of problems or conflicts of laws. In addition, it is observed that in many jurisdictions, no ready provisions of law are available as to when and/or on what conditions a foreign judicial sale of ship will be recognized as having the same legal effects as a domestically accomplished judicial sale of ship. In view of the above, it is hoped that the answers and/or comments to the questions in this group will help to gather as much information as possible about the real situation and the prevailing practices in your jurisdiction with respect to recognition of foreign judicial sales of ships.

Belgium

a) As a prior general comment to the questions sub 4 the Belgian Maritime Law Association wishes to indicate that it is not possible to give a generalized correct answer to the questions raised.

The answer will very much depend on what legal challenges are being brought.

- Is it a challenge by the depossessed old owner against the creditor who obtained the depossession abroad ? Or
- Is it a challenge of the depossessed old owner against the new owner?
Or
- Is it a request of the new owner to deregister the ship and all charges from the Belgian Register? Or
- Is it a claim of the holder of a charge against the new owner ? Or
- Etc.

b) What is meant with the term “jurisdiction” in the questions Sub 4? Reading the questions under point 4 makes the Belgian Maritime Law Association wonder if the difference – as exists in most Civil Codes countries between the power of a court to hear a matter and the power of a court to make a certain decision in respect of a matter are not joined in this question. Let us have a simple example: a Belgian court may have jurisdiction for a claim brought by a citizen against another Belgian citizen over a conflict regarding the sale of a ship in a foreign jurisdiction. However that same Belgian court would not have the power to change that foreign decision. It may only refuse enforceability of such decision.

c) Various statutory provisions will be applicable depending on the very specific facts. Giving a general answer will therefore not be possible. In short

the statutory provisions of relevance are (amongst some others):

- the International Treaties Belgium signed in respect of jurisdiction and in particular the Brussels Convention on Jurisdiction, the Lugano Convention and Regulation 44/2001,
- the provisions of the Belgian International Private Law 2004 in respect of the recognition and enforcement of foreign courts decisions,
- the provisions of the Belgian International Private Law 2004 in respect of the recognitions of foreign authentic acts,
- the provisions of Belgian law in the Maritime Code which provides that enforced sale of the vessel results in the disappearance of all charges on the vessel.

4.1 Will a judicial sale of a ship accomplished in a foreign jurisdiction be recognized in your jurisdiction as having the same legal effects as the judicial sale of a ship accomplished in your jurisdiction? If yes, please list the circumstance and explain the conditions for such recognition.

Argentina

Provided that the notice of a judicial sale of a ship effected in a foreign jurisdiction be made by the judge who orders the judicial sale through a rogatory letter with all the formalities required by the local law, our Courts and the Register will recognize such judicial sale as having the same effects as the judicial sale of a ship accomplished in our jurisdiction.

Australia

It is not clear whether a judicial sale of a ship that has occurred in a foreign jurisdiction has the same legal effects as in Australia as there is no relevant case law or statutory provisions in relation to this issue. Having said that, the answer is likely to depend on the particular jurisdiction where the foreign sale has been accomplished and the manner in which the judicial sale of the ship was conducted.

Belgium

The new provisions of the Belgian International Private Law 2004 and the fact that no challenges have arisen in respect of this matter make it impossible to correctly and with certainty answer this question. However it is the tentative opinion of the Belgian Maritime Law Association that the holder of an (extract or copy) of authentic act establishing the acquisition of a vessel by way of a forced sale will be considered the owner of such vessel and ought not to be disturbed by charges prior to the acquisition.

Brazil

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Where there is no Brazilian interest involved, this sale does not matter as far as Brazilian courts are concerned. However, if there are Brazilian parties, this judicial sale must be recognized by the Higher Court of Justice by way of an *exequatur*, which shall be granted if it does not offend the Brazilian sovereignty or if there is no Brazilian court decision on the same matter.

Canada

Yes. For the judicial sale of a ship carried out in a foreign jurisdiction to be recognized in Canada, the order of the foreign Court confirming the judicial sale of the vessel would have to be recognized and enforced in Canada by way of an application to the Canadian Court, as would be the case for any other foreign judgment. Generally speaking, the requirements are as follows:

1) An affidavit filed in support of an application must accompany it, including an exemplified or certified copy of the foreign judgment, any reasons, including dissenting reasons, given in respect of that judgment and a copy of any arbitration agreement under which the judgment was awarded and shall state:

- (a) that the foreign judgment was not fully satisfied as at the filing of the application;
- (b) whether the foreign judgment debtor appeared in the original proceeding;
- (c) an address in Canada for service on the foreign judgment creditor;
- (d) the name and usual or last known address of the foreign judgment debtor;
- (e) whether interest has accrued on the amount payable under the foreign judgment in accordance with the law of the state of the originating court or arbitral tribunal and, if interest has accrued, the rate of interest, the day from which it is payable, the amount due at the time of the filing of the application and, where applicable, the day on which interest ceases to accrue;
- (f) the rate of exchange into Canadian currency prevailing on the day on which the foreign judgment was rendered, as ascertained from a chartered bank in Canada;
- (g) that, having made careful and full inquiries, the applicant knows of no impediment to registration, recognition or enforcement of the foreign judgment; and
- (h) that the foreign judgment is executory, that no appeal or other form of judicial review is pending and that any time prescribed for the making of an appeal or application for judicial review has expired.

2) Where a foreign judgment debtor did not appear in the original proceeding, an affidavit referred to in subsection (1) shall be accompanied by an affidavit of service on the foreign judgment debtor of the document instituting the original proceedings.

China

There are no direct provisions on this in PRC laws. In principle, the PRC court shall recognise the judicial sale of a ship accomplished in a foreign jurisdiction on a reciprocal basis.

Croatia

A foreign judicial sales of ship is considered for the purpose of its recognition in Croatia as a foreign judgment. A foreign judgment can be equated with the judgment of a Croatian court and produce legal effect in Croatia only if recognized by a Croatian Court (Private International Law Act, Art.86, par.1.) The conditions for recognition and are laid out in the PIL Act and they are mostly of a procedural character. These conditions include the following: (1) *res judicata* effect of foreign judgment (Art. 87) - a judgment has become final pursuant to the law of the country of origin; (2) jurisdiction (Art. 89, para. 1)– the foreign judgment will not be recognized if the Croatian court or other authority has exclusive jurisdiction for the matter that was decided by the judgment; (3) reciprocity (Art. 92, para.1); Absence of procedural violation that prevented the party to participate in the proceedings (Art.88, para. 1); Absence of violation of public policy (Art. 91); absence of final domestic judgment and of a foreign judgment that was already recognized in the same matter (Art. 90).

Denmark

Yes, subject to the requirements in the DMA, Sections 76(4) cf. question 3.5 above.

Dominican Republic

Yes, in principle. Should the new owner submit the foreign jurisdiction award, sentence or certificate resulting from a judicial sale, duly translated into Spanish language, attached to a request of deletion or a request for the subject vessel to be registered under his/her new ownership, the local authorities would normally comply with such request, recognizing such legal effects.

France

A judicial sale accomplished in a foreign jurisdiction is recognized by French Courts as a legal fact as long as it has not received the “exequatur” and nobody cannot fail to recognize it. Consequently, in the long term, it is likely having the same effects as the judicial sale accomplished in French jurisdiction.

Germany

A judicial sale of a vessel usually involves some formal decision rendered by a court to the effect that a particular party is the new owner of the vessel, usually the one who made the highest bid in the auction. It is not the sale itself,

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but this particular court decision which may be subject of recognition in Germany. Also, a recognition of foreign court decisions, as a matter of international procedural law, usually only extends the effects of the foreign decision, which it has its own country, to Germany. A recognized foreign court decision therefore cannot have further effects in Germany which it does not have in the state of its origin. Therefore, strictly speaking, one cannot say (as expressed in the question) that a foreign decision has the same legal effects as a domestic decision. You would therefore have to consider in detail what the effects of the respective decision in its state of origin are. A decision which e.g. declares that a particular party is the new vessel owner and that all rights on the vessel are extinguished would have, if recognized, the same effect in Germany. Foreign court decisions may be recognized in Germany. The requirements of such a recognition are laid out in a number of instruments, such as Council Regulation (e.c.) No. 44/2001 (Brussels I), the new Lugano-Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, a number of bilateral conventions between Germany and other states as well as in the German procedural code in cases where no international instrument is relevant. In detail, the requirements for a recognition may vary, however, broadly speaking, the following conditions must be met:

(1) the court who rendered the decision to be recognized must have, according to German procedural law, jurisdiction;

(2) the recognition of the decision must not be contrary to German public policy;

(3) in case of a default decision, certain minimum requirements as to the service of court documents must have been met;

(4) the court decision does not contradict any previous decision between the party on the same matter.

In particular, in the course of recognition proceedings, the foreign court decision will not be checked for further deficiencies.

Italy

It is necessary that the foreign judgment pursuant to which title of an Italian ship is transferred to the bidder in a judicial sale be recognized in Italy. Within the European Union, the matter is governed by chapter III of Regulation 44/2001. Outside the EU, unless there is a bilateral agreement with the State in which the judgment or order was issued, the provisions of Italian Law No. 218 of 31st May 1995 will apply. Pursuant to article 64 of such law, a foreign judgment is recognized in Italy if: a) the judge issuing it had jurisdiction pursuant to the principles of Italian law; b) proceedings were brought to the knowledge of the defendants (i.e. in our case, the owner of the ship) in compliance with the *lex fori*; c) the parties filed an entry of appearance or were declared in default in accordance with the *lex fori*; d) the judgment

becomes final and binding; e) the judgment is not in conflict with an Italian judgment that is also final and binding; f) no proceedings on the same subject are pending between the same parties before an Italian Court; and g) the judgment is not in conflict with the Italian public order rules.

Japan

No. The successful bidder will have to seek a judgment in Japan to change the registered ownership and/or to delete the registered mortgage or other change based on the judicial sale.

Malta

Yes, a judicial sale accomplished in a foreign jurisdiction will in principle be recognized in Malta as long as the ship was within the jurisdiction of the court in virtue of whose order the ship was sold and as long as the court was competent.

Nigeria

No. Whilst the Nigerian court would respect a foreign judicial sale, the enforcement of the foreign order would require that an application be made to the court to register and enforce the same. The process is not automatic and evidence will have to be supplied to the Nigerian court.

Norway

Yes, provided that at the time of the sale the vessel was in the territory of the state where the forced sale took place and that the sale was performed in accordance with the laws of that state and the provision of the 1967 International Convention on Maritime Liens and Mortgages.

Singapore

Generally yes.

Slovenija

Yes, on the basis of a procedure for the recognition of foreign awards.

South Africa

There have been no cases in South Africa where a foreign judicial sale has not been recognized. In our view, where a judicial foreign sale to be challenged the party challenging that sale would have to show that:

- (a) the court which ordered an/or confirmed the judicial sale had no jurisdiction to entertain the case in accordance with the principles recognized by South African law with reference to the jurisdiction of foreign courts;
- (b) that the recognition and enforcement of the foreign judicial sale by

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- the South African courts would be contrary to public policy;
(c) that the Order for the judicial sale was obtained by fraudulent means.

Spain

Recognition of judicial sales will be obtained in States party to the MLM 93. Also any judgment or order may be given recognition in other EU countries pursuant to EU Regulation 44/2001.

Sweden

A judicial sale abroad may be scrutinized under the general principles of public policy, due process of law, etc., for recognition in Sweden if it is challenged before the Swedish courts or authorities. If the title acquired abroad is fundamentally sound according to these principles, Sweden will recognize the purchase, and the title acquired there, whether the vessel was Swedish or foreign.

United States of America

By principles of comity, U.S. Courts would respect a judicial sale of a ship ordered or conducted by a court in a foreign jurisdiction provided that the court proceedings met certain minimum standards applicable under U.S. law generally for recognition of foreign judgments. Whether the U.S. Courts would recognize a foreign judgment which purports to discharge all lien claims against the vessel may depend on whether the foreign court had jurisdiction over the vessel itself at the time the judgment and sale occurred and whether, by its own terms, the court-ordered sale purported to cause the vessel to be sold “free and clear.” If the sale was not court-ordered and conducted with certain minimal standards regarding notice and other features of due process, it is not at all clear that the sale would be recognized by U.S. Courts.

Venezuela

Yes, but only if it has complied with the due process and all parties have been notified.

4.2 Would a court in your country have jurisdiction over a case brought by the previous ship-owner and challenging the foreign judicial sale of a ship?

Argentina

No. The previous ship-owner would be granted leave to challenge the foreign judicial sale of its vessel before a local court.

Australia

This will depend on whether the previous ship-owner is susceptible to the jurisdiction of an Australian court or whether the vessel the subject of the disputed sale is within Australian jurisdiction.

Belgium

Belgian Courts do not have jurisdiction over foreign courts. They could only decide to refuse enforceability of a foreign court's decision. There are no known precedents under the present statute laws.

If the new owner can present a legalised copy of the authentic Act establishing the acquisition it seems this ought to be recognised in Belgium.

Brazil

The judicial sale must be challenged before the court where it was conducted.

Canada

The Federal Court has jurisdiction over "any claim with respect to title, possession or ownership of a ship or any part interest therein or with respect to the proceeds of sale of a ship or any part interest therein" which is exercised exclusively "*in rem*" and in greater particularity, has jurisdiction "over all ships, whether Canadian or not and wherever the residence or domicile of the owners may be". A previous ship-owner could challenge the recognition and enforcement of a foreign judicial sale but the grounds for contesting the recognition of a foreign judgment in Canada are very limited. It would require proof that the foreign judgment was obtained *ex parte* and that the prior ship owner was never served with the proceedings, that a fundamental principle of procedural equality were not respected or that the order somehow violates a basic principle of public order in Canadian law.

China

Possible. In the event that the original owner who challenges the ownership of the ship in question lodges an application to arrest the ship when the ship enters the PRC territorial waters, and files claims against the current ship-owner thereafter, then the PRC court may entertain her jurisdiction over this dispute.

Croatia

It is quite unlikely that previous ship-owner would challenge the foreign sale of a ship before a Croatian court. Challenge procedure would take place in a country where judicial sales occurred. But in a case like that, jurisdiction of a Croatian court could be established on the basis of general / specific jurisdictional criteria (defendant's domicile, defendant's property located in Croatia etc., or in case where a ship has the Croatian nationality).

Denmark

This question is not dealt with explicitly in the DMA nor the AJA and will therefore depend on whether or not the case falls under the ordinary rules in Denmark on jurisdiction in civil and commercial matters. There are no rules that explicitly and automatically precludes the previous shipowner from initiating legal proceedings in Denmark against for example the buyer of the ship - nor against the other involved parties - provided there is jurisdiction for such proceedings under applicable Danish law. With respect to cases against defendants domiciled within the EU, the question of jurisdiction will be decided based on the Brussels I Regulation⁴⁸. With respect to cases against defendants domiciled within the EFTA, the question of jurisdiction will be decided based on the Lugano Convention⁴⁹. With respect to cases against defendants domiciled outside the EU/EFTA, the question of jurisdiction will be decided based on the AJA.

Dominican Republic

In principle, if a lawsuit is brought here by the previous ship owner, the court will accept jurisdiction. Nevertheless, pending on the manner in which the case is presented to the court, the same will accept or decline jurisdiction. We however understand and believe that the court would reject jurisdiction, “*ratione personae vel loci*” but it has to be done by a sentence from the same court.

France

A French Court seems not to have competent jurisdiction over a case brought by the previous ship-owner, challenging the foreign judicial sale of a ship.

Germany

German procedural law, in relation to questions of jurisdiction, does not specifically provide nor exclude particular German jurisdiction in relation to claimants challenging foreign (or domestic) judicial sales, neither in respect of the previous vessel owner nor the holders of a maritime lien, mortgage or other charge. Rather, German courts will have jurisdiction if the normal requirements of European, International or German Procedural Law on law are met. In particular, there would be jurisdiction if the defendant, against whom the proceedings are brought, is domiciled in Germany or, depending on the circumstances, if the respective vessel is found in a German port.

Italy

⁴⁸ Officially the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (or Council Reg (EC) 44/2001 for short)

⁴⁹ Officially the “Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters”, (also known as the EVEX Convention)

Yes, but within the proceedings for the recognition of the foreign judgment through which the title has been transferred to the successful bidder in the forced sale.

Japan

There is no particular provision in Japanese law allowing the previous ship owner to challenge the foreign judicial sale of ship. The previous ship owner may bring an action against the buyer for a declaration to confirm its ownership. In such cases, the Japanese court has jurisdiction when the defendant buyer resides in Japan, when the register of the said ship is in Japan or when the ship herself is located in Japan.

Malta

We understand that the scenario of the above question would therefore see the previous ship-owner instituting the case against the execution creditor upon whose request the vessel would have been sold by judicial auction. Maltese procedural law lays down the instances where our courts would have jurisdiction. One would have to see whether the grounds of jurisdiction are satisfied. However, we do not see what benefit may be obtained by the previous ship-owner challenging the foreign judicial sale of the vessel in Malta since presumably, the foreign judicial sale would be a 'res judicata' and since moreover it is likely that any proceeds from the judicial sale would be deposited with a foreign court.

Nigeria

An action *in rem* may be commenced in Nigeria pursuant to Section 2(2)(c) of the Admiralty Jurisdiction Act 1991 in respect of a claim for the satisfaction or enforcement of a judgment given by any court (including a court of a foreign country) against a ship. But a court in Nigeria would have jurisdiction over a foreign sale only if there was some link with Nigeria, for example, if the parties were Nigerian, or the vessel was registered in Nigeria; or if the vessel (after its sale) was within Nigerian jurisdiction.

Norway

Norwegian court will generally only have jurisdiction in a case if the case fulfils the requirements relating to jurisdiction: The case must have sufficient connection to Norway. These general requirements apply to a situation where a vessel is the object of a forced sale abroad, and can not generally be answered yes or no. The case (the forced sale) must have sufficient connection to Norway). If the vessel is registered in Norway, the requirements are likely to be fulfilled. If neither the vessel nor the previous or the new owner is Norwegian, it is likely that the requirements are not fulfilled.

Singapore

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Yes. Jurisdiction is assumed while the ship is within Singapore port limits.

Slovenija

No.

South Africa

In the event that the ship in question was within the jurisdiction of the South African courts then our courts would have jurisdiction to hear any dispute regarding the judicial sale of that ship by virtue of Section 2 of the Act which states that the High Court of South Africa will have jurisdiction to hear and determine any maritime claim irrespective of the place where it arose, of the place of the registration of the ship concerned or of the residence, domicile or nationality of its owner.

Spain

Affirmative.

Sweden

As mentioned under 4.1, the judicial sale would be scrutinized under the general principles for recognition in Sweden. The case would therefore be able to be brought to court and the validity of the judicial sale would thereby be scrutinized.

United States of America

Depending on the facts, a Court in the U.S. could have jurisdiction over a claim by a former owner challenging the new ownership, either on the basis of personal jurisdiction over the new owner or on the basis of jurisdiction over the vessel.

Venezuela

Yes, in case the vessel has been arrested in Venezuela or Venezuela is the flag State.

4.3 Would a court in your country have jurisdiction over a case brought by the holder of a maritime lien, mortgage or other charge attached to the ship prior to the foreign judicial sale of a ship and challenging the foreign judicial sale of a ship?

Argentina

No. The holder of a maritime lien, mortgage or other charge attached to the ship would not be granted leave to challenge the foreign judicial sale of its vessel in a local court .

Australia

This will depend on whether the maritime lien holder, mortgagee or chargee is susceptible to the jurisdiction of an Australian court or whether the vessel the subject of the disputed sale is within Australian jurisdiction.

Belgium

See 4.2.

Brazil

Yes, unless the judicial sale has been recognized in Brazil.

Canada

Yes, the holder of a maritime lien, mortgage or other charge attached to the ship that is the subject of the foreign judicial sale order could challenge its recognition in Canada, but again the grounds for challenging the foreign judgment would be limited as mentioned in 4.2.

China

Possible. In the event that the holders of these rights who proclaim their rights on the ship in question lodge the application to arrest the ship when the ship enters the PRC territorial waters, and file claims against the current ship-owner thereafter, then the PRC court may entertain her jurisdiction over this dispute.

Croatia

Same as in 4.2 above.

Denmark

The answer to this question is similar to that under question 4.2 above.

Dominican Republic

Again, if a lawsuit is brought here by any creditor, in principle, the court would accept jurisdiction. Nevertheless, pending on the manner in which the case is presented to the court, the same will accept or decline jurisdiction. We believe, however, that the court will, at the end, reject jurisdiction, "*ratione personae vel loci*" but this has to be done by a sentence from the same court.

France

A French Court seems not to have more competent jurisdiction over a case brought by the holder of a maritime lien, mortgage or other charge attached to the ship prior to the foreign judicial sale and challenging the foreign judicial sale, since this Court has no competent jurisdiction over this last judicial sale.

Germany

See answer to 4.3.

Italy

Probably in the same situation as specified in the response to the previous question.

Japan

There is no particular provision in Japanese law allowing the holder of a maritime lien, mortgage or other charge to object to the foreign judicial sale of a ship. The holder of a maritime lien, mortgage or other charge may bring an action against the buyer for a declaration of its interest in the ship. In such cases, the Japanese court has jurisdiction when the judicial sale buyer resides in Japan, when the register of the said ship is in Japan or when the ship herself is located in Japan. A maritime lien on the ship could be enforced in Japan even after a foreign judicial sale is made, until the maritime lien is extinguished by recognition in Japan of the foreign judicial sale. Similarly, a mortgagee could enforce their mortgage over the ship, until its registration is deleted.

Malta

Again, one would have to see whether any one of the grounds for jurisdiction of the Maltese courts subsists. However, at the end of the day, the ship is within the jurisdiction of the particular court where the ship is found. If the foreign court orders the judicial sale of a vessel within its jurisdiction, Maltese law provides that the interest of the mortgagee as well as of any other creditor shall pass onto the proceeds of the sale of the ship. Thus, even if there had to be a Maltese judgment in favour of the holder of a maritime lien, the maritime lien holder may still be unable to enforce the Maltese judgment against the ship which would have been judicially sold by auction.

Nigeria

Please see the answer to the previous question.

Norway

Please see the answer to 4.2 above. If a mortgage is registered in Norway, it is likely that the case has sufficient connection to Norway.

Singapore

Yes. See 4.2.

Slovenija

No.

South Africa

Yes.

Spain

Affirmative.

Sweden

See the answer above.

United States of America

The answer to this question would be the same as to a title claimant.

Venezuela

Yes, under article 128 of the Venezuela Organic Marine Spaces Law.

4.4 If the court in your country would have jurisdiction over the cases mentioned in Question 4.2 and/ or Question 4.3, which country's law would apply with regard to the substantive issues of the dispute?

Argentina

It is not the case. However, if our Courts would have heard the case they will be bound to apply the law of the flag state.

Australia

The answer to this may vary depending on the content of the substantive dispute.

Belgium

Whenever Belgian Court are asked to give the foreign courts decision enforceability they may by Statute Law not reassess the matter⁵⁰. They may only decide to refuse enforceability.

Brazil

In principle, the Brazilian law, unless there intervened a valid jurisdiction clause.

Canada

The Canadian Court would apply Canadian Maritime Law, and in particular, its rules for recognition of foreign judgments and, where relevant, foreign law, subject always to public policy and public order. It would only entertain

⁵⁰ Art. 25&2 IPL.

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defences dealing with the method in which the foreign judgment was obtained and particularly whether basic principles of fundamental justice were enforced. If it is alleged that the foreign legal proceedings were not brought to the attention of the party contesting the recognition of the foreign judicial sale, a Canadian court would look to the procedural rules on service applicable in the jurisdiction where the judicial sale was carried out.

China

There are no direct provisions on this in PRC laws. It is likely that the court will select the law under which the judicial sale was carried out as the proper law to see any vices of the judicial sale in respect of the rights of the previous ship-owner or of the holders of a maritime lien, mortgage or other charge attached to the ship.

Croatia

This depends on the qualification of the dispute applied by the court. If the dispute would be qualified as one relating to the ownership of or encumbrance (mortgage, maritime lien) on the ship, the applicable law would be the law of the ship's flag. If a court characterises a disputed issue as the one belonging to the issue of sales than there is no express conflict of law rules one can apply. Therefore a court will be forced to determine applicable law by analogy following the general conflict of law principles, and most probably a court would apply the law of the country where judicial sale has taken place.

Denmark

With respect to matters relating to the procedure of enforcement, a Danish court would apply the law of the State where enforcement has taken place, cf. also the principle in Article 2 of the Convention. That means that with respect to judicial sales conducted in Denmark, Danish law would be applied to all such procedural questions. With respect to conflicts relating to the order of priority between various rights over the ship the clear main rule is to apply the laws of the country of registration. However, there are situations/questions in which a Danish court will apply Danish law regardless. It follows from Section 75(1) of the DMA that the Danish rules on maritime liens in Sections 51-56, 71-73 and 76-77 must always be applied by Danish courts regardless of where the ship is registered. This means that a Danish court will always apply Danish law (*lex fori*) to questions concerning the existence and priority of *maritime liens*.

Dominican Republic

In the hypothetical case that the court would accept jurisdiction, being such a private issue (a dispute among individuals/private companies), the court will

always apply the local law, unless otherwise requested by the parties.

France

As a result of answers to question 4.2 and 4.3, the question of the applicable Law is not relevant under French Law.

Germany

Strictly speaking, the question of the applicable material law would not arise. The only way a foreign judicial sale of a ship could be challenged in Germany is by preventing recognition of the underlying court decision, either within the recognition proceedings brought by the new owner or by seeking a declaratory relief that the foreign court decision cannot be recognized in Germany. Whether or not there will be recognition, is subject to the questions referred to under 4.1 above. German courts will not once more re-open the underlying proceedings which led to the relevant foreign decision. Nevertheless, according to German international private law principles, a German court would in respect to property and other rights such as mortgages in the vessel apply the law of the state where vessel's register is located (not necessarily the state of the vessel's flag). There is also in particular rule relating to maritime liens. As a matter of German law, these are subject to the law applicable to the secured claim.

Italy

It is not possible to answer this question without knowing which the substantive issues are. We can assume that in forced sale proceedings issues are procedural, rather than substantive.

Japan

It would depend on the grounds on which the plaintiff has applied for a judgment to nullify the effect of the foreign judicial sale. If the previous owner protests against a decision of a foreign court to start a judicial sale of the ship based on the validity/enforceability of their claim/maritime lien/mortgage, the governing law should be that applicable to the claim/maritime lien/mortgage. If the previous owner protests against an alleged abuse of process in a judicial sale or tortious conduct of the defendant, the governing law is that where the tortious act or its result occurred.

Malta

It is rather difficult for the Maltese Courts to have jurisdiction and we see no scope for such proceedings to be brought in Malta.

Nigeria

The court would apply Nigerian law. Issues of foreign law pleaded would be treated as issues of fact and if no evidence of foreign were tendered, the court

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would assume that it is the same as Nigerian law. Certified copies of foreign proceedings may be tendered in evidence.

Norway

The substantive issues of the dispute will be subject to Norwegian law. However, as described in 4.1 above, Norwegian law refers to the law of the country where the forced sale was carried out. Ultimately the laws on forced sale in the country where the forced sale was carried out will be applicable.

Singapore

If the dispute concerns the proprietary of the foreign judicial process, then the Singapore Court will have regard to the law of the foreign legal process. If the dispute concerns the transfer of title, then the Singapore Court will consider the governing law of the transfer and/or the law of the place the vessel was situated at the point of transfer.

Slovenija

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South Africa

The application of the relevant law will be determined by an interpretation of Section 6 of the Act. In terms of this Section Roman Dutch law as applicable in South Africa would be applied in the first instance unless it can be shown that this was a matter in respect of which the Court of Admiralty in South Africa as referred to in the Colonial Courts of Admiralty Act, 1890, of the United Kingdom had jurisdiction immediately prior to the commencement of the Act, namely September 1983. In the latter case English law will be applied.

Spain

The law of the vessel's flag.

Sweden

Judicial sales in foreign States is recognized and has the same effect as Swedish judicial sales if the vessel was within the jurisdiction of that State and the sale was effected in accordance with the law of the said State and the provisions of the 1967 International Convention on Maritime Liens and Mortgages.

United States of America

This answer assumes that the action in the U.S. is brought *in rem* against the vessel. A U.S. Court would apply its own legal standards for determining whether a foreign forced sale would be recognized as valid and enforceable in the U.S. It is less likely that the U.S. Courts would review whether or not

the foreign sale conformed to the requirements of its home jurisdiction's legal standards. As to the claims, the U.S. Court would entertain maritime lien claims against a vessel only if they were proven to be recognized in the place in which they arose and only if they were recognized under 46 U.S.C. Chapter 313. A claim of owner brought against the vessel would only be entertained if the claimant could show the foreign-forced sale failed to meet minimum standards for recognition and the claimant proved that it had legitimate claims to ownership of the vessel under the law of her flag as entered by the claimant.

Venezuela

The law of the place where the procedure took place, but if a notification of the beginning of the trial was held on Venezuela, the Venezuelan Court should establish if it complied with due process and the right to defense, according to article 49 of the National Constitution. Additionally, the foreign court decision can be challenged if the Venezuelan courts had jurisdiction or whether there was a prior decision on the same subject issued by Venezuelan courts.

4.5 If a ship which is entered in a register of ships in your jurisdiction is sold in a foreign jurisdiction by way of judicial sale, will the register of ships in your jurisdiction delete the registration of that ship upon notice of the foreign judicial sale or upon production by the purchaser of a document such as an order or a certificate issued by the foreign court that conducted and controlled the sale? If yes, please explain the circumstances and conditions in detail.

Argentina

Our Court of Appeal has ruled in the affirmative. Although there are no specific procedures in this regard, in practice the local Register will delete the registration upon receiving a local court order to do so as a consequence of the local court having received a rogatory letter from the foreign court which approved the judicial sale of the ship abroad.

Australia

An application needs to be made to the Supreme Court of a State or Territory to amend the records of the Register in accordance with the Shipping Registration Act (Cth) 1981.

Belgium

A distinction is to be made between the deregistration of the ship and the termination of all charges registered. The deregistration of a ship charged with an hypothec or otherwise does not in itself result in the termination of

inscription of those charges such as a hypothèque. Such “hypothecary inscription” remains existent as long as it has not legally ceased to exist (15 years after initial inscription) or radiation has been asked (in which case the holders of charges are informed one month prior to the deregistration⁵¹) or an order of the court to the effect of deregistration (Radiation) the court has been issued. The principle is therefore that charges inscribed remain inscribed even if the ship is deregistered⁵². As long as the charges such as hypothèques have not been deregistered the deregistration document of the vessel will mention those charges. In order for the legal consequences of a forced sale (forced sales result in all liens and hypothèques to cease to exist)⁵³ to have effect the registrar must be presented by:

- either an agreement of the inscribed creditor, or
- a judgement to that effect.

As mentioned before forced sale has as an automatic effect that all inscribed hypothèques and liens disappear⁵⁴ and that those are transferred on to the price of the adjudication⁵⁵. It is also referred to point 4.1.

Brazil

A foreign court is not supposed to notify the Brazilian register directly. On the other hand, under Article 22 of Act 7.652/88, the purchase who produces documents acknowledged by the local Brazilian consulate may obtain that the previous register be deleted.

Canada

The Canadian Registrar of Ships would not be compelled to delete the registration of a Canadian-flagged vessel upon simple presentation of a foreign judicial sale order. Unless the registered owner consents to the deletion, it would be necessary to have the foreign judicial sale order recognized by the Canadian Courts in order to compel the Canadian Registrar to delete the registration certificate.

China

There are no direct provisions on this in PRC laws. Article 40 of MSPC should apply, under which the former owner should apply to the ship registrar to delete the registration of the ship under his name. It says: “*A purchaser, having taken delivery of the ship, shall by virtue of the auction confirmation and other relevant documents, complete the formalities of ownership*”

⁵¹ Art.5 & 2 Shipsregistration Code

⁵² Art. 5 § 1 Shipsregistration Code.

⁵³ Art. 37 Maritime Code.

⁵⁴ Art. 37 Maritime Code.

⁵⁵ Art. 1655 J.C.

registration with the ship registrar. The former ship-owner shall cancel the ownership registration with the previous ship registrar. Ownership of the ship is transferred notwithstanding that the former ship-owner fails to cancel the ownership registration”.

Croatia

If the foreign document is a court decision, it would have to be recognized in Croatia (please see 4.1 above). If the foreign document is not a court decision but a certificate or notice or some similar official form issued by the court clerk, such document would be considered a “foreign public document”, and would have to be legalized in Croatia. Croatia is party to the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. If the foreign public document originates from a state that is party to the Convention, an apostille would eliminate the need for legalisation.

Denmark

Yes, but the requirements in the DMA, Sections 76(4) and 17(3) will apply, cf. questions 3.5-3.7 above. The Danish Ships Register/the Danish International Register of Ships will expect to receive adequate documentation that these requirements have been complied with and that ownership has indeed been transferred to the buyer.

Dominican Republic

Yes, in principle. The Dominican Republic’s Navy, in charge of the registry of ship in this country, would accept the same.

France

It likely results from Decree n° 67-967, October 27th, 1967, article 97, that in case of sale to a foreign purchaser, the previous shipowner is bound to bring back to French Register the Act of Frenchifying and request the withdrawal of the ship from this Register. But should the shipowner fail to do so, there would be no reason to prevent the register of ships to delete the registration of that ship upon presentation by the foreign purchaser of the ship, of the judgment, or certificate, issued by the foreign court that conducted and controlled the sale.

Germany

A German register would delete a ship entered in a register if it is demonstrated that the register is incorrect, i.e. that the party entered as owner has been replaced by a new owner. This must be demonstrated to the register’s satisfaction (“Glaubhaftmachung”). If the applicant relies on documents, these must be submitted in original, duly signed, notarized and apostilled. In practise, the register requires, in particular, (1) an application that the ship is to be deleted

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from the register; (2) a power of attorney in favour of the person who files the application; (3) in case that insolvency proceedings have been open in respect of the previous owner, some confirmation by the official receiver that he is aware of the judicial sales proceedings, (4) submissions of the document previously issued by the register, i.e. the ship's certificate (in original); (5) the court decision through which the highest bidder/purchaser became the new owner of the vessel (in original, duly signed, stamped, notarized and apostilled); (6) and an informal report describing the judicial sale, together with copies of the underlying correspondence, as an indication that regular proceedings were carried out; (7) and, where appropriate, the court order in respect of the distribution of the proceeds of the sale. Also, the register would write to the holders of the mortgages entered in the register request and allow them to comment on the fact that the vessel is to be deleted. It would seem that the German registers would not require a recognition of the underlying court order issued in the course of the foreign judicial sales proceedings, but are satisfied if the underlying circumstances are explained in a satisfactory way. However, should it be that e.g. the holder of a mortgage is not prepared to accept the deletion of the vessel (and his mortgage) from the register, questions of recognition of the foreign judicial sale and the respective court order would arise. It would seem that this issue has not become relevant in practise yet.

Italy

No, at present, since Italy has not ratified the 1993 Convention on Maritime Liens and Mortgages yet.

Japan

No.

Malta

Where in virtue of a judicial sale of a Maltese flagged vessel, the purchaser of a ship is not a person who is qualified to own a Maltese ship, upon obtaining knowledge or on being given notice of the judicial sale, upon receiving copies of the proceedings of the judicial sale certified to the satisfaction of the Maltese Registrar of Ships, the Registrar shall make an entry thereof in the vessel's register and the register of the ship shall be closed except in so far as related to any unsatisfied mortgages entered therein. However, at the same time, Maltese law provides that following a judicial sale, the interest of the mortgagees as well as of any other creditor in the ship shall pass onto the proceeds of the sale of the ship.

Nigeria

No, because Section 29 of the Merchant Shipping Act 2007 provides that the Nigerian Shipping Registrar shall not permit the de-registration of a ship

Synopsis of the replies from the Maritime Law Associations, by Francesco Berlingieri

registered in Nigeria without the consent in writing of all the registered holders of mortgages on the ship so registered. Therefore, the mere production of the order of judicial sale simpliciter although significant, will not suffice for cancellation/deletion/deregistration of such ship.

Norway

In order to register a vessel in Norway following a forced sale, the purchaser must present to the registry a “forced bill of sale” (or similar document, being in fact a bill of sale issued in relation to a forced sale) issued by the foreign court. The forced bill of sale must be notarized and apostilled in order to be approved for registration by the Norwegian registry. If this requirement is fulfilled, the registration will be conducted in the same way as if the forced sale had been conducted in Norway.

Singapore

No.

Slovenija

Yes.

South Africa

Yes.

Spain

Affirmative provided it is arranged pursuant to MLM 93. Otherwise, the judicial sale order or judgment will need be first recognized in Spain.

Sweden

If the title acquired abroad is fundamentally sound according to the principles mentioned previously, Sweden will recognize the purchase and the title acquired there, whether the ship is Swedish or foreign. A purchaser who satisfactorily shows evidence of acquisition of a vessel at a judicial sale abroad should have no difficulty in having the vessel deregistered from the Swedish Register of Ships.

United States of America

If a documented U.S.-flag vessel is arrested and sold in a foreign jurisdiction by way of judicial sale, assuming minimal standards applied by that jurisdiction in the sale, the U.S. Coast Guard (which administers the U.S. registry) would delete the vessel from documentation upon return of the original U.S. Certificate of Documentation to the Coast Guard and the filing with the Coast Guard of “(1) evidence of the sale or transfer, if any; and (2) evidence that the Maritime Administration has consented to the sale of any

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vessel for which Marad consent is required under U.S. law.” 46 C.F.R. Section 67.173. It is doubtful that any foreign court ordering a forced sale of a U.S.-flag vessel would feel itself constrained to sell only to a U.S. citizen purchaser. Our belief is that the Coast Guard would nonetheless issue the deletion certificate upon presentation of evidence of the sale and evidence of the foreign courts’ orders authorizing and confirming the sale.

Venezuela

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4.6 If a foreign ship were sold in a foreign jurisdiction by way of judicial sale, will a register of ships in your jurisdiction enter that ship in its registration regardless of whether the previous foreign registration has been deleted?

Argentina

Yes.

Australia

No. An application needs to be made to the Supreme Court of a State or Territory to amend the records of the Register in accordance with the Shipping Registration Act (Cth) 1981.

Belgium

In principle this is not possible. A ship cannot be registered in the Belgian Register of ships if there is no proof that the previous registration of the ship has been deleted previously. To register a ship in Belgium it is also necessary to provide:

- the status of encumbrances as stated in the foreign Register (certificate of encumbrance of non-encumbrance);
- the identity of the last owner as stated in the foreign Register.

If the foreign Register of ships refuses to hand over those documents, this is a problem that has to be solved:

- by the laws of the state that conducted the judicial sale; and/or by the laws of the state where the ship has been previously registered.

Brazil

The vessel will be deemed to be a Brazilian ship following procedures at Customs to that effect. After that, she may be registered as a Brazilian ship.

Canada

No. The Canadian Ship Registrar must insist on receipt of a deletion certificate from the foreign ship registry prior to registering the vessel as a

Canadian vessel.

China

There are no direct provisions on this in PRC laws. Articles 4 and 15(2) of the PRC Regulations on Ship Registration should apply. It defines that, “*A ship shall not have dual nationality. A ship registered abroad shall not be granted the Chinese nationality unless its former registration of nationality has already been suspended or deleted. A ship-owner applying for the Chinese nationality of a ship of foreign nationality purchased abroad which still has the foreign nationality, shall submit a certificate issued by the original ship registration authority at the former port of registry to the effect that the former nationality has been deleted or that the former nationality will be immediately deleted at such time as the new registration is effected* In short, the PRC ship registrar will not register the ship to be a PRC flagged ship unless and until the previous foreign registration is suspended or deleted.

Croatia

The Croatian ship register will not register a ship until the previous foreign registration is deleted. It may allow a so-called pre-registration, pending delivery of the foreign deletion certificate.

Denmark

No, cf. the main rule referred under question 3.7 above.

Dominican Republic

Yes it would. It has happened many times before.

France

French register of ships will enter a ship which has been sold in a foreign jurisdiction by way of judicial sale, providing the purchaser gives a written evidence of the transfer of the ownership of the ship to him by effect of the judicial sale, with regard to the deletion of the previous foreign registration.

Germany

In principle, German law provides that the vessel is deleted from the previous register before it may be entered in a German register. In principle, the register, before entering a ship, requires an official confirmation that the vessel has been deleted in the foreign register. However, in cases where the previous owner and/or the previous register is unable to co-operate or for some reasons refuses to delete the vessel from the register, the German register may take a more practical approach. It may be sufficient that the applicant, i.e. the new vessel owner, demonstrates to the register’s satisfaction (“Glaubhaftmachung”), that he is the new owner who obtain property in the

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vessel by way of foreign judicial sale. The German register may accept documents confirming that the judicial sale was properly carried out and that the court order confirming that ownership passed to the applicant has become final and binding.

Italy

No. In order for a foreign ship to be registered in Italy, the applicant must provide the Registrar with a deletion certificate of the ship from the previous register.

Japan

No. A foreign ship first shall obtain Japanese flag before registration. For such purpose, we need the certificate of deletion of the ship's registration in the country of ship's registration after the change of the registration of ownership from the previous ship owner to the successful bidder.

Malta

We believe that the Maltese Registrar of Ships would still require a deletion certificate from the previous registry or evidence that the previous register has been duly closed.

Nigeria

Section 24(1) of the Merchant Shipping Act provides that a person shall not be registered as the owner of a ship until he signs a declaration of ownership stating, inter alia, that to the best of his knowledge and belief no other person is entitled to any legal or beneficial interest in the ship or any share in the ship. Subsection (2) of the above section states that where a declaration is made that the former registration of a ship has been deleted, evidence of deletion shall be produced. Thus the registry would require some form of evidence of delisting in the old registry before they can have the ship registered.

Norway

No. It is a pre-requisite for registration in the Norwegian register that the vessel is deleted from her previous register.

Singapore

No. A certificate of deletion is required.

Slovenija

Previous registration shall be deleted.

South Africa

No.

Spain

Negative. A deletion certificate will be required for registering the ship in Spain.

Sweden

No, the previous registration must be deleted.

United States of America

The owner of the vessel must present evidence of removal (e.g., deletion certificate) of the vessel from foreign registry upon application for initial registry or return to U.S. registry. 46 C.F.R. Section 67.55

Venezuela

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5. *The necessity and feasibility to have an international instrument on recognition of foreign judicial sales of ships*

Note: The IWG is aware of a few cases regarding the recognition of foreign judicial sales of ships. It is believed that the reported cases represent just a small part of the whole picture. On the other hand, since the International Convention on Maritime Liens and Mortgages 1993 came into force on 5 September 2004, and provisions concerning notice and effects of forced sale are contained therein, it might be sensible to consider whether it is necessary and feasible to work out an international instrument, before further resources are put into this project. For this purpose, the questions in this group are designed to gather as much information as possible on the whole picture and to identify as many real problems that have been encountered by the international shipping industry as possible.

5.1 *Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale and that sale has been challenged by the previous ship-owner or another interested person in a foreign jurisdiction? If yes, please list the cases and highlight the issues involved in detail.*

Argentina

We could not find records of any case.

Australia

No, there are no reported cases.

Belgium

We are not aware of any relevant challenges.

Brazil

Answer to this question requires further research in the court records.

Canada

To the best of our knowledge, there are no reported cases where a vessel sold by judicial sale in Canada was challenged abroad by the previous ship-owner or other interested person.

China

Yes. The “*Great Eagle*” Case, 1994 (1) SA 65 (C).

In July 1991, a Cypriot company (the “Claimant”) instituted an action in *rem* against a Panamanian company (the “Respondent”), which was commenced by the arrest of the motor ship *Greet Eagle* at Saldanha Bay, South Africa. The main claim is for a *declarator* that the Claimant is owner of the ship and entitled to its possession. The alternative claim, on the premise that the Claimant is not the owner and that the owner is liable to the Claimant in *personam*, is for the recovery of damages in the amount of 4.4 million US dollars arising from the concerted fraudulent actions of a number of parties which resulted in the Claimant being dispossessed of the ship at Qingdao, the PR China, and the Respondent’s becoming its current registered owner. It is accepted by the Respondent that up to 30 May 1991 the Claimant was the owner and under his ownership the ship was named *Mnimisyni*, but it was on that day the ship was auctioned by Qingdao Maritime Court, the PR China, and as the purchaser of the ship under the judicial sale the Respondent became the owner since then. The Respondent filed an application for the release of the ship and argued on three grounds, namely (1) as a matter of statutory interpretation, the Act⁵⁶ doesn’t empower an action in *rem* where the action and the arrest are directed at the claimant’s own ship, as is the case in a vindicatory claim; (2) the Claimant has no *prima facie* case justifying the action and the accompanying arrest; and (3) the Court is not the appropriate forum and jurisdiction should be declined in terms of the Act. It is concluded by the Court that (1) where a claimant seeks to vindicate his ship, the Act empowers him to arrest and take proceedings against it *in rem*. It follows that applicant’s first ground fails; and (2) the claimant has failed to make out a *prima facie* case in respect of the causes of the action, that means the second ground on which the applicant has based his application is good. Being so, it is unnecessary to deal with the third ground, namely the *forum non conveniens* point. It is ordered by the Court *inter alia* that the ship be released from arrest and that the Claimant’s action is dismissed with costs. It shows that the court recognized the transfer of ownership of the ship in question which was sold by the Chinese court under Chinese law.

Croatia

We are not aware of such cases.

Denmark

⁵⁶ The Act refers to the Admiralty Jurisdiction Regulation Act 105 of 1983.

We do not have knowledge of any such cases in Denmark.

Dominican Republic

No, there has not been a case, at least that we are aware of.

France

Yes, but it was a foreign sale in Bahamas, disputed in Italy. The challenge failed but this exceptional case did not happen in France.

Germany

No.

Italy

No, to our knowledge.

Japan

We have not identified any such cases.

Malta

Not that we know of.

Nigeria

Not to our knowledge.

Norway

Not to our knowledge.

Singapore

No, based on current information.

Slovenija

No.

South Africa

We are not aware of any cases where the judicial sale of a ship in this jurisdiction has been challenged by the previous ship-owner (or other interested person) in a foreign jurisdiction. South African judicial sales have been challenged in the United States and in Turkey, but to our knowledge there are no reported cases in those jurisdictions dealing with this issue.

Spain

Not aware.

Sweden

United States of America

Yes. *Goldfish Shipping, S.A. v. HSH Nordbank AG*. Turkish-flag vessel M/V *Ahwetbey* docked in the Port of Philadelphia on June 6, 2003, and was arrested by Nordbank, which had a first mortgage. Owner was Odin Demizcilik, A.S. (“Odin”). Court held in favor of Nordbank and ordered the vessel sold. The U.S. Marshal sold the vessel to Goldfish Shipping for \$2,350,000.00 by bill of sale, dated November 17, 2003, which stated title is transferred free and clear of all claims, liens, or encumbrances in favor of any other person or entities which may have claimed an interest or a lien on the Vessel.” On December 10, 2003, Odin wrote to Goldfish claiming the auction was “illegal” and that a company related to Odin had filed a lien against the vessel in Turkey. Odin claimed that Turkish law required that any sale take place in Turkey. A week in advance of the auction, Odin published an ad in Lloyd’s List on October 16, 2003, stating that no deletion certificate could be issued by the Istanbul Registrar without Odin’s consent and, therefore, no purchaser at auction could acquire title to the vessel. Goldfish asserted that Nordbank had power-of-attorney to obtain deletion under its mortgage document, yet failed to obtain deletion. Goldfish began to trade with the vessel, and Odin arrested it in Barcelona, Spain, and later in Ravenna, Italy. Goldfish bonded out the arrests in both cases but suffered delays, costs and the cancellation of a charter as a result of the arrests. Goldfish brought an action against Nordbank to recover its losses on the basis that Nordbank should have obtained the deletion of the vessel from Turkish Registry. Nordbank claimed that it could not cause deletion without cancelling its own mortgage under which it still claimed a deficiency. The District Court dismissed all Goldfish’s claims, saying that the claims all were based on the premise that Goldfish had not received good title to the vessel at auction and this was not the case, citing the Ship Mortgage Act, in particular 46 U.S.C. Section 31326(a). The District Court stated that all claims, including Odin’s claim to the vessel, were entirely terminated by the judicial sale. This result was upheld by the United States Court of Appeals for the Third Circuit.

Venezuela

No.

5.2 *Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale in a foreign jurisdiction and that sale has been challenged by the previous ship-owner or another interested person in your jurisdiction? If yes, please list the cases and highlight the issues involved in detail.*

Argentina

There are at least two cases involving river barges. We understand that challengers were defeated in both cases. Even though we could not find records of any case involving sea going ships, it should be noted that our legal system applies to either fluvial or sea going vessels. 12

Australia

No, there are no reported cases.

Belgium

We are not aware of any relevant challenges.

Brazil

Among them, there was the challenge to the judicial sale of the m/v *Lloyd Pacifico*, bought by American shipowners, by members of the staff of Companhia de Navegação Lloyd Brasileiro, who set up a trust to operate the vessel on a usufruct basis, for payment of their wages in arrears. The challenge failed.

Canada

To the best of our knowledge, there are no reported cases where a previous ship-owner or other interested person has challenged in Canada the recognition and enforcement of a foreign judicial sale order of a vessel. However, state expropriations have been challenged.

N.B. There appears to be a consensus at this time of those members of CMLA Committees who worked on the preparation of this Questionnaire with respect to the following answers, but they must not be considered formal definitive positions as the CMLA Executive has not yet had the opportunity to consider the issues in detail.

China

Yes. The “*Union*”, 2005 Jin Hai Fa Shang Chu Zi No. 401.

On 24 June 2005, the ship, *Union*, which is registered in Belize was arrested by Tianjin Maritime Court of the PR China at the application of a French bank based in Paris, for enforcement of a mortgage on the ship *Phoenix*, which is the former name of the ship now registered with the name of *Union*. The mortgage was effected on the ship *Phoenix* for the purpose of securing a loan in the sum of 5 million US dollars, and registered on 4 November 1999 in St. Vincent and the Grenadines, and was further registered in Russia in later November 1999 when the ship was bareboat chartered to a Russia company. In order to recover from the borrower the outstanding balance of the loan which is in the sum of 2 million US dollars, a judgment has been obtained in the mortgagee’s favour from the Commercial Court of Paris in September 2003. However, the judgment is not performed or satisfied by the borrower.

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In the lawsuit filed with the Chinese Maritime Court by the French bank, it was claimed that the duly registered mortgage on the ship *Phoenix*, of which the current name is *Union*, should be recognized by the Court and enforceable on the ship irrespective of the change of her name and registration. On the other side, the current registered owner of the ship filed a defence and counterclaimed with respect to the costs and damages which were allegedly brought about by the wrongful arrest of the ship by the French bank. It was maintained by the current shipowner that the ship, *Phoenix*, was arrested in May 2003 and auctioned in November 2004 by the Court of Rason, the Democratic People's Republic of Korea (hereinafter referred to as the "DPRK Court") at the applications of a number of claimants for unpaid crew wages and port charges, and for repayment of outstanding loans. The purchaser of the ship is a local company, who after the sale registered the ship on a temporary basis with the local maritime administration under its name with a new ship's name of *Rason*. In June 2005, the purchaser sold the ship to the current shipowner who in turn registered the ship in Belize on 7 July 2005 under its name with the current ship's name, i.e. *Union*. Apart from the above, it is investigated by the Maritime Court that after the sale of the ship by the DPRK Court the registration of the ship and the mortgage in St. Vincent and the Grenadines was not deleted. Due to the fact that neither of the parties has requested to apply or provided any material to prove the contents of the applicable foreign laws (including the laws of St. Vincent and the Grenadines, the DPRK and Belize), the Chinese Maritime Court applied the PRC laws to all the issues disputed in this case. It was held by the Maritime Court *inter alia* that (1) after the sale of the ship by the DPRK Court, all charges and encumbrances, including the French bank's mortgage on the ship are all extinguished given the fact that the registration of the ship and the mortgage in St. Vincent and the Grenadines was not deleted; (2) it is only a legal fact to be investigated and considered by this Court if the ship was once sold by the DPRK Court, that does not involve any recognition or enforcement by the PRC court of any judgment or order of the DPRK Court; and (3) it is not within the jurisdiction of this Court to examine and judge whether or not the ship sold by the DPRK Court was in accordance with the DPRK law, including whether or not a proper notice has been sent to the French bank and/or the ship's register in St. Vincent and the Grenadines. Based on these grounds, the claims of the mortgagee were dismissed by the Maritime Court. In addition, the appeal by the mortgagee was also rejected by the High Court of Tianjin⁵⁷.

Croatia

⁵⁷ See Judgment [2006] Jin Gao Min Si Zhong Zi No. 95

To the best of our knowledge, there have not been such cases.

Denmark

To our knowledge this issue has only arisen once in published case law - UfR 1937.334 SH. In this case a Swedish judicial sale over a Swedish ship was upheld by a Danish court in 1937. The ship had been sold at the judicial sale to a Danish buyer who had registered the ship in Denmark who was then subsequently sued by Swedish holders of rights whose claims had been extinguished by the Swedish judicial sale. The Danish court applied Danish law and upheld the judicial sale.

Dominican Republic

No, there has not been a case like this before, at least that we are aware of.

France

See answer to 5.1.

Germany

No.

Italy

No, to our knowledge.

Japan

No, we have not identified any such cases.

Malta

We know of no such case exactly as you put it however it may be of interest to note that one of our members has been involved in what is referred to here as a "Section 37 Action" – which is an application to the court requesting it to prohibit the further sale or transfer of the vessel until the merits of the case are heard in the appropriate jurisdiction. The section 37 has been instituted in Malta against the current owner of a yacht because it is being claimed by the applicant, the current owner purchased the yacht from a company which had purchased the yacht in a judicial sale by auction in Turkey in very suspicious circumstances. Therefore the action being heard in Malta IS NOT challenging the foreign judicial sale per se but is purely a security measure. The actions actually challenging the judicial sale are taking place in Turkey and in Greece.

Nigeria

Not to our knowledge.

Norway

Not to our knowledge.

Singapore

No, based on current information.

Slovenija

No.

South Africa

There have been no such cases.

Spain

Mention can be made of the case “*Cerro Colorado*”, sold in the U.K. but challenged later by crew members in the Spanish Courts.

Sweden

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United States of America

Still under review and subject to input from the broader MLA Membership and Board of Directors.

Venezuela

No.

5.3 Article 11 of the International Convention on Maritime Liens and Mortgages 1993 provides that notice of a forced sale must be given to various parties. Do you think that those provisions are appropriate and should they be accepted as the basic requirements for recognition of a foreign judicial sale of ship?

Argentina

We think that for practical reasons, the notice should be limited to the consul of the flag state, and it will be for the competent authorities of the registration state to give the necessary notice as appropriate. We are also of the opinion that the notice should be provided at least 30 days in advance of the auction and should contain all the information set out in Article 11.2 (a) and (b) of the International Convention on Maritime Liens and Mortgages 1993.

Australia

No. The provision is not wide enough and there should be a requirement to advertise more broadly.

Belgium

The Belgian Maritime Law association for now has to abstain from commenting. Please note that most (but not all) of the requirements of Art 11 are at present inscribed in Statute law.

Brazil

Yes.

Canada

The requirement that a notice of a forced sale, (in Canada an order for the appraisal and sale of the vessel) be served on the Registrar of the ship's flag, the registered mortgagees or holders of hypothecs as well as the registered owner of the vessel seems to be appropriate as these are parties with a direct interest in the vessel who can be easily identified and their address for service can be easily ascertained. However, holders of maritime liens are not registered in the Ship Registry in Canada. Often times, these maritime liens are secret and only come to light if the lien holder asserts an action *in rem* against the vessel. Imposing an obligation to serve these lien holders is not practical in Canada. That being said, it should be common practice for the order to be served on all parties having asserted a right against the vessel or its owners. If an action *in rem* against the vessel is asserted by the lien holder, they would receive service of the order in any event.

China

Yes.

Croatia

Yes. In the opinion of this Association, the Article 11.3 should be amended so as to provide for compulsory (instead of facultative) announcement of the judicial sale in the specialised international publications.

Denmark

In our opinion these provisions are appropriate and acceptable as basic requirements for notice. The key purpose is to provide all known holders of rights on the ship with sufficient notice of the judicial sale in order to give them the opportunity to take appropriate measures. This purpose seems to be fulfilled with the wording in these provisions. However, it goes without saying that the provisions are to be viewed as minimum requirements, meaning that the contracting states should be free to place more stringent requirements in their national legislation in such respects.

Dominican Republic

Yes, we do think that they are appropriate and that they should be accepted as the basic requirements for recognition of a foreign judicial sale of ship?

France

It seems effectively that provisions of article 11 of the International Convention on Maritime Liens and Mortgages 1993, would be a real progress for the benefit of the information of certain parties concerned by a judicial

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sale of ships, and should be accepted as the basic requirements for legal and binding recognition (not only as a fact) of a foreign judicial sale of ship, and so even if holders of Maritime Liens will not be informed because they are not registered by written.

Germany

Based on the principles mentioned before the provision how to notify the forced sale in Art. 11 and the conditions laid down in Art. 12.1 are appropriate. We think that the provision to choose any electronic means for the notification if ever available should be accepted as “best practice”. Otherwise it could be difficult to fulfill the period of 30 days prescribed in art. 11.2.

Italy

Yes, we think that they are appropriate and would solve many problems, thus also expediting deregistration and re-registration of the ship concerned.

Japan

We consider that Articles 11 and 12 of the 1993 Convention, which are the subject of Questions 5.3 to 5.5, represent the minimum conditions or effects with respect to the recognition of foreign judicial sales of ships. However, in order for one country to accept a result of a judicial sale of a ship in the other country, it would have to review the jurisdiction of the court having conducted the judicial sale, whether there is reciprocity between the two countries, and whether such recognition and enforcement would not be contrary to its public policy. A review of these points should be similar to the one relating to the recognition and enforcement of foreign judgments. Also, we consider that we may need to review the possibility of uniting different countries’ laws and procedures with respect to the objectives, the scope, the effect of maritime liens and mortgages and various other matters in relation to these (including governing law), as well as the procedures for enforcing maritime liens and mortgages, *inter alia*; the relationship with bankruptcy, insolvency and other restructuring procedures. This process would necessarily extend to each country reviewing its procedures on the recognition and enforcement of foreign court’s or authority’s findings and decisions in general and on the procedures to enforce judgments, liens or mortgages with respect to automobiles, aircrafts and real estate. We recommend proceeding with a review of the appropriateness and necessity of revising the 1993 Convention as against the agreement of a separate Convention on this subject, once you have conducted a review of the points raised above.

Malta

It is the view expressed by a number of members that we do not to agree that the competent authority in the state where the judicial sale is taking place has

to notify the holder of the registered mortgage (Article 11(1)(b)) as it may be difficult, if not impossible, to obtain information on the registered mortgages from some flag states. Instead of Article 11(1)(b), the obligation should simply be to notify the flag state where the ship is registered who should then notify any registered mortgages as per its records. The required mandatory notice period of 30 days contemplated in Article 11(2) could delay the judicial sale. We recommend that a shorter mandatory notice period such as 10 days be considered. Otherwise, no other comments with respect to Article 11.

Nigeria

In many instances of forced sale in Nigeria, the vessel has been abandoned and it would not be practicable to give the appropriate notices. However, we think it should be sufficient to give notice to the embassy or consulate of the flag state of the vessel.

Norway

Yes. The notification requirements will give the involved parties information about the potential forced sale, and will give the parties an incentive and possibility to protect their interests.

Singapore

No.

Slovenija

Yes, they are appropriated and they should be accepted.

South Africa

South Africa is not a party to the International Convention on Maritime Liens and Mortgages 1993. However, we are of the view that notice of a forced sale should be given to various parties.

Spain

Affirmative. Very appropriate.

Sweden

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United States of America

Still under review and subject to input from the broader MLA Membership and Board of Directors.

Venezuela

Venezuela is not a State Party to this international convention, but that provision is contained in Article 122 of the Law of Maritime Commerce.

However, the notification should be done to enable the ship-owner to challenge the Court decision and not only to be aware of the execution on the decision and as a consequence the possibility of a judicial sale.

5.4 Article 12.1 of the International Convention on Maritime Liens and Mortgages 1993 sets down two conditions that must be satisfied so that the registered mortgages or charges, liens and other encumbrances attached to a ship shall be extinguished after its forced sale. Do you think that those provisions are appropriate and should also be followed in recognition of a foreign judicial sale of ship?

Argentina

Yes. Save for the notice that we think should be restricted to the consul of the flag state, the provisions set out in Article 21.1 (a) and (b) are appropriate and should be followed in recognition of a foreign judicial sale of ship.

Australia

Yes.

Belgium

The Belgian Maritime Law Association has no particular view on this question. The reason being that the practice as established and executed in effect results in creditors being properly informed.

Brazil

Yes.

Canada

It would be appropriate that for a judicial sale to be effective and extinguish the rights of mortgagees, lien holders and others with the rights *in rem*, the vessel must be in the jurisdiction of the state under whose authorities the sale is taking place. However, the second condition, being that the parties identified at Article 11 receive notice, would not be practicable for holders of maritime liens for the reasons set out in our answer to 5.3.

China

Yes.

Croatia

Yes.

Denmark

We consider these provisions to be appropriate. They are almost identical to the provisions contained in Sections 76(4) and 17(3) of the DMA.

Dominican Republic

Yes, we do think so.

France

Article 12.1 of the International Convention on Maritime Liens and Mortgages 1993, is appropriate as regards the registered mortgages, but what about the non registered liens or other charges? They seem to survive to a judicial sale until a time bar expires, providing the Law of the State where takes place the judicial Law does not provide expressly for their extinction.

Germany

See answer to 5.3.

Italy

The rule laid down in article 12.1 is of fundamental importance, otherwise nobody would bid at the sale. A bidder will normally require the guarantee that the ship is sold free of all encumbrances, unless he is aware of the encumbrances and is willing to take over them, obviously reducing the purchase price accordingly. The two conditions set out for the operation of the rule are both reasonable. As to the first, please note that in its absence, a court might exercise its authority beyond its jurisdiction and two forced sales might take place at the same time for the same ship. As to the second condition, it ensures basic protection for the mortgagees and the known holders of maritime liens as well as for the owner of the ship.

Japan

See answer to 5.3.

Malta

We confirm that same are appropriate and should be followed in recognition of a foreign judicial sale of ship – subject to comments re Article 11 set out in previous answer.

Nigeria

Subject to our comment in answer to 5.3 in relation to Article 11, we would agree that those provisions are appropriate.

Norway

Yes. However, it should be considered whether non-monetary rights in the vessel (i.e. pre-emption rights) which has a better priority than the creditor

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that applied for the forced sale shall survive the forced sale, as these rights will not be covered by the proceeds from the sale.

Singapore

No.

Slovenija

Yes, they are appropriate and should be followed in recognition.

South Africa

Yes.

Spain

Affirmative.

Sweden

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United States of America

Still under review and subject to input from the broader MLA Membership and Board of Directors.

Venezuela

Yes.

5.5 Article 12.5 of the International Convention on Maritime Liens and Mortgages 1993 regulates the issuance of a certificate by the court that conducted the sale and the deregistration and registration of the ship that has been sold. Do you think that those provisions are appropriate and should they be made of general application in recognition of a foreign judicial sale of ship?

Argentina

Yes. We think that the provisions set out in Article 12.5 are appropriate, and they should be made of general application in recognition of a foreign judicial sale of ship.

Australia

Yes.

Belgium

The Registrar is a Civil Servant of the Belgian State entrusted with certain States prerogatives. Accepting that such civil servant must execute such State prerogatives at the presentation of a foreign (Court) decision without the prior

declaration of enforceability by a Belgian Court would at present be difficult. A possibility of Control by the Belgian Judiciary ought to remain possible.

Brazil

Yes.

Canada

As stated in the response to question 2.5, the order confirming the judicial sale of the vessel may or may not state that the purchaser has title free and clear of all charges, liens, mortgages or other encumbrances. However, the possibility of issuing a certificate and clarifying that the Registrar of Ships will be bound to delete all registered mortgages or other charges and to register the vessel in the name of the purchaser would simplify the transfer of title.

China

Yes.

Croatia

Yes.

Denmark

It seems worthwhile to establish a common standard for a certificate to be issued by such courts which will be recognized by foreign courts and registries similar to the standard forms of Bills of Sale. In our opinion Article 12.5 of the Convention does not specify in sufficient detail the wording that should be included in such a certificate. This is an obvious topic for discussion for the IWG. Registration and de-registration of ships in is our experience a highly complex legal area which varies considerably from country to country. With respect to judicial sales we are of the opinion that if a common standard wording could be agreed upon to evidence the judicial sale and the compliance with the rules and procedures in the Convention this would make it considerably easier and transparent to conduct judicial sales.

Dominican Republic

Yes, we do.

France

Such a certificate could be helpful to prevent any failure of the previous shipowner to deregister his ship.

Germany

The provisions in Art. 12.5 which are regulating the issuance of a certificate and the deregistration and registration are appropriate. They should be made

of general application in recognition of a foreign judicial sale of a ship.

Italy

In our opinion, also this provision is of fundamental importance in order to ensure the immediate effect of the forced sale and to enable the buyer to obtain the registration of the ship in its own name or the deregistration of the ship from the previous register, as the case may be. Failing that provision, the forced sale of a ship in the court of a State other than the State of registry would imply difficulties and uncertainties.

Japan

See answer to 5.3.

Malta

In general, the provisions are appropriate and should be followed in recognition of a foreign judicial sale of ship – subject to comments re Article 11 set out in previous answer. However, we would like to have the prospect of allowing the purchaser to ‘assume’ any registered mortgages, hypothèques or charges with the consent of the holders reconsidered as we have our doubts as to how this works in practice and that this ought not to be made of general application in recognition of a foreign judicial sale of a ship.

Nigeria

We reiterate our answer to 5.4 above.

Norway

Yes.

Singapore

Yes.

Slovenija

Yes.

South Africa

Yes, we do believe that these provisions are appropriate and should be made of general application in recognition of a foreign judicial sale of a ship.

Spain

Affirmative.

Sweden

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United States of America

Still under review and subject to input from the broader MLA Membership and Board of Directors.

Venezuela

Yes, it is also contemplated in the Venezuelan Civil Procedure Code, under article 573.

5.6 Bearing in mind that the International Convention on Maritime Liens and Mortgages 1993 has come into force and that provisions concerning notice and the effects of forced sale are contained therein, is it still necessary and feasible to have a separate international instrument, such as a convention, to deal with issues regarding the recognition of foreign judicial sales of ships?

Argentina

No. We do not believe it to be necessary.

Australia

Probably not.

Belgium

Within the European Union and in as far as the recognition regards decisions of courts from another member states of the EU a prior question ought to be if individual member states may agree on international rules which would result in EU decisions being subject to enforcement and recognition rules in other EU countries which are different from the ones provided for by the Brussels Convention on Jurisdiction or Regulation 44/2001. In general however the Belgian Maritime Law Association could inscribe itself in such Convention on condition that it restricts itself to requirements regarding information of inscribed creditors.

Brazil

No.

Canada

An international convention on the recognition of foreign judicial sales of ships would be useful in achieving uniformity in the judicial sales of vessels and simplifying their recognition and enforcement worldwide. While it is true that the International Convention on Maritime Liens and Mortgages addresses the “forced sale” of vessels, a number of maritime liens and the scope thereof which it specifies has led to some controversy. It is one of the reasons why Canada has not ratified this convention. A more narrow and

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focused convention on the recognition of foreign judicial sales of vessel may be more easily ratified and implemented by a greater number of states.

China

Yes. Since the 1993 Convention remains silent in respect of the recognition of foreign judicial sale of ship, it brings about some obstacles in settling those disputes amongst different nations. In this regard, it is very much necessary to draft a new international instrument to make up the hole. However, it is worthwhile to point out that such blank could be deliberately left by the 1993 convention drafting group for some reasons. As different nations adopt different attitude towards recognising and enforcing a foreign civil verdict or judgment, the prospective instrument is expected with more practical.

Croatia

Although this subject is very closely connected to maritime liens and mortgages and naturally belong in the same unification instrument, for purely tactical reasons it may be useful to create a separate international instrument dealing solely with recognition of judicial sales of ships. The reason lies in the traditionally low acceptance (including the lack of acceptance by some crucial maritime countries) of international conventions dealing with maritime liens and mortgages. If the recognition of foreign judicial sales remains in the same unification instrument as liens and mortgages, this alone may reduce the chances for a regime of international recognition of judicial sales to acquire wider acceptance. A separate international instrument would allow this subject to test its international acceptability based on its own merit.

Denmark

Though the Convention has come into force, the Convention is a part of *lex mercatoria* and is there non-binding. Consequently, it still seems necessary to have an international instrument to deal with issues such as recognition and enforcement of foreign judicial sales. If there is no such instrument, non-compliance with the Convention remains unsanctioned and judicial sales are still not recognized or enforceable in certain jurisdictions.

Dominican Republic

Yes, we do indeed.

France

Considering the fact that very few States have already ratified the International Convention on Maritime Liens and Mortgages 1993, it might appear appropriate to have a separate international instrument, such as a convention, to deal with the recognition of foreign judicial sales of ship, even if their provisions would integrate 1993 convention articles 11 and 12

provisions.

Germany

The international legal policy should follow the approach,; The Convention on Maritime Liens and Mortgages should be supported and governments of those States which have not ratified the Convention should be convinced to do so.

Italy

We suggest that, since the Executive Council of the CMI decided, at its last virtual meeting, to set up an International Working Group with the task of carrying out an investigation in order to find out the reasons for which the great majority of the maritime States have so far refrained from ratifying the Convention, it would be appropriate to await the report of such new Working Group. If they are able to identify the provisions that have prevented a large number of States from ratifying the Convention, a possible solution might be (rather than considering a new convention) to amend such provisions with a Protocol.

Japan

See answer to 5.3.

Malta

We suggest that the International Convention on Maritime Liens and Mortgages 1993 be amended so as to be more extensive in order to cover issues regarding the recognition of foreign judicial sales of ships. Even though the 1993 Convention has entered into force, so far it has not been widely accepted or ratified amongst the international community so the international community may be given the option of ratifying an amended 1993 Convention which is more extensive in scope.

Nigeria

Since Nigeria has acceded to the Convention, we do not think is necessary. In due course, amendments to our existing laws may be made to give proper effect to the provisions of the Convention.

Norway

No. we are of the view that the International Convention on Maritime Liens and Mortgages 1993 is a satisfactory instrument regarding forced sales of ships, also when the sale takes place abroad.

Singapore

Yes.

Slovenija

Recognition of foreign judicial sales of ships

No.

South Africa

Yes.

Spain

It is a difficult question. The MLM 93 provisions are self-contained and sufficient but as a whole perhaps the subject of judicial sales should be developed further and in detail by way of a supplementary Protocol.

Sweden

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United States of America

Still under review and subject to input from the broader MLA Membership and Board of Directors.

Venezuela

Yes.

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**DISCUSSION PAPER FOR
REVIEW OF SALVAGE CONVENTION 1989
INTERNATIONAL SUB-COMMITTEE MEETING: 12 MAY 2010**

STUART HETHERINGTON¹

Introduction

In December 2008, the International Salvage Union (ISU) wrote to the Comité Maritime International (CMI) pointing out that the Salvage Convention 1989 (the Convention) was nearly 20 years old and it was over 30 years since work had first begun on its drafting. It suggested that there was a need for review of certain aspects of the Convention and invited CMI to undertake such a review.

The CMI set up an International Working Group (IWG) in 2009 and a Questionnaire was sent to National Marine Law Associations (NMLA) in July 2009. A copy is attached to this paper (Annex 1). Seven responses had been received prior to a meeting of the IWG which was held in London on 17 September 2009.

Also attached are a report of the IWG meeting (Annex 2) and a synopsis of the responses received from those seven NMLAs as well as the seven further NMLAs who have responded since that meeting (Annex 3), making a total, at the time of the preparation of this Discussion Paper, of 14.

As will be seen from the Questionnaire, questions were asked concerning various matters identified by the ISU in relation to eight articles in the Convention, they being Articles 1, 5, 11, 13, 14, 16, 20 and 27.

Before considering the responses to the Questionnaire, and the issues which were raised in it, it is proposed to describe the background to the debate concerning the appropriate remuneration of salvors which has taken place over the last 30 years.

Background

A little over 30 years ago (September 1979) the CMI established an

¹ Chairman: IWG & ISC Review of Salvage Convention 1989, March 2010.

international subcommittee under the chairmanship of Professor Erling Selvig to study the subject of salvage and prepare a report for the Montreal Conference to be held in 1981. An IWG was set up which drafted a new Salvage Convention to replace the 1910 Salvage Convention (which CMI had also prepared). At the 1981 Montreal Conference a draft text was approved by the Assembly and forwarded to IMCO (which changed its name in 1982).

LOF80

This activity was in response to discussions which had taken place at the IMCO Legal Committee, following on from the “*Amoco Cadiz*” disaster in 1978. Not surprisingly industry responded to the challenge of community concerns and opened the door to providing an extended remedy for salvors in respect of laden tankers. It provided that the ship owners should reimburse the salvor for his expenses, plus a fair rate for tugs, craft, personnel, and other equipment, of up to an additional 15% to the extent that it exceeded any salvage award, the amount of the increment being dependent upon the value of the result of the salvor’s effort. This term was referred to as the “safety net” (in clause 1(a) of LOF 1980) and its introduction reflected an ever increasing awareness worldwide of the effects of oil pollution on the environment. Prior to that industry had, of course, reacted earlier to the growing environmental concerns caused by oil pollution (the TOVALOP Agreement which was followed by the Civil Liability Convention).

Liability Salvage

As a first step in the work done by CMI, following on a request from IMCO, Professor Selvig prepared a “Report on the Revision of the Law of Salvage” in April 1980, which is to be found in the *Travaux Préparatoires* of the Convention on Salvage 1989. That report is as relevant today as it was then. In discussing salvage operations Professor Selvig made the following comments:

“in the overall context of international shipping State - organised machineries established at the national level, cannot be regarded as a viable alternative to an internationally active private salvage industry. National machineries will probably be tailor-made to the needs of the coastal state concerned and primarily for use in the waters adjacent to that State.

However, most States will not be in a position to establish or maintain on its own or on a regional level a salvage machinery with the overall capacity required. Consequently, the role of national machineries can be expected to be only a supplementary one, mainly limited to the area within their respective jurisdictions.

The overall cost of such a combined system under which the private

salvage industry retains a main role will probably be less than the system based only on State organised salvage. The capital intensive character of modern salvage techniques suggest that at a given cost level, the combined system will make available to international shipping and States affected thereby, a higher and permanent overall salvage capacity....

The income of the salvage industry must be sufficient to maintain an internationally adequate salvage capacity. It is probably required that total compensations reach a higher level than at present. Moreover, the risk of incurring expenses without compensation or of incurring liabilities in connection with salvage operations, should not be such that salvors are discouraged from intervening in particular cases”.

Professor Selvig then went on to introduce the concept of “liability salvage”. He said as follows:

“Nevertheless, the concept of salvage should be extended so as to take account of the fact that damage to third party interests has been prevented. Since the ship which created the danger, will have a duty to take preventive measures in order to avoid such damage, this will mean that salvage should refer not to ship and cargo, but also to the ship’s interest in avoiding third party liabilities (liability - salvage). Thus, the ship’s liability insurers should be involved in the salvage settlement and pay for benefits obtained by the salvage operation.

In the long run the law of salvage cannot neglect to recognise that compensation for salvage is nearly always actually paid by insurers. Moreover, insurers of ship and cargo cannot reasonably be required to cover fully the expenses for salvage operations from which another group of insurers - the liability insurers - regularly benefit.

Inclusion of the liability interest within the concept of salvage will undoubtedly provide a more equitable distribution of the overall cost of salvage. It may also provide a beneficial encouragement to salvors to engage in salvage operations when third party interests outside the ship are in danger, particularly in cases where the chance of saving ship and cargo is rather remote. Finally, contributions from new sources may enable the international salvage capacity to remain at an adequate level”.

Later on in his report Professor Selvig also made the following comments:

“The salvor should be entitled to a reward on the ground that liability for damage to third party interests outside the ship has been prevented or minimised. This should be considered to be “a useful result” within the meaning of the principles of “no cure and no pay” of the 1910 Convention Article 2....

Some particular rules may be required to determine how the reward for liability – salvage shall be fixed. The values in danger as well as the salvaged values will as a rule have to be determined with regard to

applicable limits of liabilities. In the case of oil pollution, for instance, depending upon the circumstances, both the 1969 and the 1971 limits may be relevant, also with the consequence that the liability insurer and the fund each will have to cover a proportionate part of the reward.

In cases where the salvors have prevented damage for which the ship owner would not have been liable, the salvors may only recover the cost of preventive measures...

In cases of liability - salvage as well as salvage of ship and/or cargo, the reward may be fixed in two stages, first the total amount and subsequently the apportionment determining for which amount each of the respective interests shall be responsible."

CMI - Montreal Conference

It is also worth quoting from the report of Professor Selvig, which accompanied the text of the IWG draft convention with the papers for the CMI Montreal Conference [CMI Yearbook Montreal 1]. He said as follows:

"The main differences of view in the sub-committee related to the question of whether salvors should be entitled to payments on the ground that salvage operations have been carried out also in order to prevent damage to the environment or that by the endeavours of the salvors such damage has actually been avoided. One approach to these problems was suggested in the chairman's initial report, another in the LOF 1980 and the draft prepared by the British MLA. The compromise, now contained in the draft convention Articles 3.2 and 3.3, reflects the "safety net" idea of the LOF 1980 as well as certain other notions having emerged during the discussion, and assumes that, in accordance with the draft convention Article 1.5, these articles may be departed from by contract."

What is often referred to as the "Montreal Compromise" is described by Professor Nicholas Gaskell in the *Tulane Maritime Law Journal* (1991) Volume 16, in this way:

"Under the Montreal Compromise the salvors agreed to give up some of their more radical proposals. [Footnote 20: Foremost among these was the concept of "liability salvage", by which the salvaged fund was to be increased beyond the value of the property salvaged to include a notional amount representing pollution liability saved, eg by pulling a tanker away from the shoreline. The P&I Clubs were particularly concerned by this proposal as such liabilities would have been extremely difficult to quantify and potentially open ended. Salvors also wanted a 300% safety net]. In exchange, representatives of insurers, ship owners and cargo owners agreed to certain provisions which would increase their present liability. It is essential to appreciate that those involved in the Montreal Compromise regarded the core compensation provisions in the 1981

CMI Draft Convention as a package. In particular, there was to be a balance in the responsibility for paying for pollution prevention between ship and cargo interest. Like most compromises, nobody was happy with everything, but the need to reach agreement was regarded as paramount. ... Nevertheless, it is right to record that the substance of the Montreal Compromise was eventually incorporated in the 1989 Convention.”

In essence what was approved at the Montreal Conference was what had been drafted by the IWG and presented for debate at the conference.

In his introductory remarks to the Conference papers, Professor Selvig had also said as follows:

“A key concept in the draft Convention, damage to the environment, has been defined in Article 1.1.4. This term refers to physical damage to persons or property, not to the economic consequences thereof. It points to damage outside the ship and covers cases of pollution, contamination and the like damage to air, land or waters in coastal or inland waterway areas, as well as other types of substantial damage in areas caused by fire, explosion or similar major incident. This concept is used in Article 3.2.1 and Article 3.3 where the relevant considerations are the endeavours of the salvors to avoid or minimise such damage or the extent to which this has been done. Damage to the environment can in a sense be described as a generic term since as a rule, it does not refer to damage to any particular person, property or interest, but rather to the damage in the area concerned. Relevant in salvage law is not the damage itself but that there exists a risk of damage emanating from a ship in danger.”

Professor Selvig also pointed out that the remuneration available to the salvor under Article 3.2 is limited to the value of the property salvaged at the time of the completion of the salvage operation.

In relation to Article 3.3 Professor Selvig pointed out that the salvor’s right to recover his expenses “is not conditioned upon any measure of success; he is to be compensated for his endeavours to avoid damage to the environment” and that the observer of the ISU considered the definition of “salvor’s expenses” in the drafts to be too narrow. Professor Selvig noted:

“The differences mainly relate, in the first place, to drafting and, in the second place, to the manner in which to take account of the salvor’s standing costs etc when determining what is a “fair rate” in the particular case. Article 3. 3(3) leaves this to the court’s discretion.”

In the CMI draft the actual limit of the special award under Article 3.3 was left in square brackets. The word “twice” was inserted in square brackets explained Professor Selvig “both because it provides some indication of the level, generally speaking, within which this special reward should be kept, and because it reflected a kind of an intermediary position and as such appeared as part of a compromise proposal...”

Salvage Convention 1989

For ease of convenience Articles 13 and 14 of the Salvage Convention 1989 are attached (Annex 4).

The Salvage Convention came into force internationally on 1 July 1995. The entry into force provisions required 15 States to agree to it (Article 29) and in Article 32 enabled the Secretary General to convene a conference of the State parties for revising or amending the convention at the request of eight parties, or one-fourth of the State parties, whichever is the higher figure.

The Salvage Convention 1989 refers to the environment in Articles 1(d), 6(3), 8(1)(b), 8(2)(b), 11, 13(2), 14(2), 14(5) and 16.

Article 8. 1(b) imposes a duty on a salvor: “to exercise due care to prevent or minimise damage to the environment”, whilst carrying out salvage operations. The owner and master of a vessel is under a similar duty - Article 8.2(b) and Article 13 emphasises in the opening words the concept of “encouraging salvage operations”.

Parts of the Convention that could be contractually agreed, became incorporated in LOF90, long before the Convention came in force, which resulted in a close examination by Lloyds Arbitrators of the special compensation provisions of Article 14 in a large number of cases.

Archie Bishop has described some of the issues and problems with Article 14 in a paper which he gave in Beijing in 2007 entitled “The Assessment of a Salvage Award under Article 13 and Special Compensation under Article 14 of the Salvage Convention”:

“Firstly, it will be noted that for this paragraph to bite the salvor does not have to succeed in protecting the environment, he simply has to be involved in a salvage operation in which the casualty threatens damage to the environment.

Secondly, it will be seen that the salvor has to carry out “salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment”. What do we mean by “threatened”? The LOF arbitrators have found that a reasonably perceived threat as opposed to an actual threat, is sufficient.”

In discussing Article 1(a), he said,

“While the general meaning of the definition is clear, there is scope for judicial development when interpreting the word “substantial”. What is substantial? The LOF arbitrators have considered it on many occasions. In the early days they appeared to take a fairly relaxed view of the word, accepting that a comparatively small quantity of oil could cause “substantial” damage if leaked into a particularly sensitive area. But a lot depends on the sensitivity of the area, as is illustrated by a recent case where a ship, laden with 30,000 tons of petroleum and 100 tons of heavy fuel oil, was prevented from grounding near Cabo de Palos on the

Spanish coast. In that case the LOF appeal arbitrator (whose decisions influence those of all the arbitrators), whilst accepting that the ship gave rise to a sufficient threat of damage to the environment to trigger Article 14.1, found that while a grounding and consequent leakage would have caused some damage, it would not have been sufficient to trigger Article 14.2 as the limited amount of damage that would have occurred would not have been “substantial” damage.

What are “coastal or inland waters or areas adjacent thereto”? They are not defined by the Convention and the phrase has not been construed by the courts. Most probably it means within 12 miles of the coast as set out in UNCLOS. However there is a case for arguing that it could be the economic zone (200 miles). How adjacent do “areas adjacent thereto” have to be? Again it is undecided but presumably so close that the pollutant might reasonably be expected to enter or seriously threaten coastal waters. Should the assessment of special compensation start before a casualty enters coastal waters?

Probably not, but the point is as yet undecided. Should it continue after the threat of damage has been removed? Yes, said the Admiralty Court in the case of the “*Nagasaki Spirit*”. Once triggered, the assessment of special compensation should continue until the end of the salvage service. To do otherwise would discourage salvors from removing the threat as soon as possible.”

In further discussing Article 14 Archie Bishop went on to say:

“It will be noted that the uplift is only payable if the salvor “has prevented or minimised damage to the environment”. An LOF appeal arbitrator has found that to benefit from this provision the salvor must prove he actually prevented or minimised damage to the environment. Unlike Article 14.1, it is not sufficient to prove that it was a reasonably perceived threat. The salvor has to show, on the balance of probabilities, that but for the services, damage to the environment would have occurred. The point is well illustrated by the facts of the case which the appeal arbitrator was considering in making this decision.

A small ship ran aground on an outcrop of rocks in the northern part of Scotland. As a result of the grounding, her fuel tanks were punctured and she lost about 30 tonnes of gas oil. Forty-five tonnes of gas oil remained on board and this was successfully salvaged, though the vessel was lost. An Article 14 claim was made and the appeal arbitrator awarded the salvors their expenses under Article 14.1 as there was a reasonably “perceived” threat of damage to the environment. However, he did not award an increment under Article 14.2 because the 30 tonnes of gas oil which had leaked had not caused any damage and he was not satisfied that the remaining 45 tons would have done so either.”

“Nagasaki Spirit”

The next development in the story is, perhaps, the decision of “*Nagasaki Spirit*” (1997) 1 Lloyds Rep 323, described by some as the straw that broke the camel’s back. The House of Lords held that “fair rate for equipment, personnel actually and reasonably used in the salvage operation” in Article 14.3 meant a fair rate of expenditure and did not include any element of profit. As Lord Mustill said in his judgment at page 332:

“...the promoters of the Convention did not choose, as they might have done, to create an entirely new and distinct category of environmental salvage, which would finance the owners of vessels and gear to keep them in readiness simply for the purposes of preventing damage to the environment. Paragraphs 1, 2 and 3 of article 14 all make it clear that the right to special compensation depends on the performance of “salvage operations” which ... are defined by article 1(a) as operations to assist a vessel in distress. Thus although article 14 is undoubtedly concerned to encourage professional salvors to keep vessels readily available, this is still for the purposes of a salvage, for which the primary incentive remains a traditional salvage award.”

SCOPIC

The problems of interpreting Article 14 led to uncertainty and dissatisfaction. Among the many problems it is understood that it was found that claims for an uplift over actual cost brought under Article 14.2 necessitated proof that the damage to the environment would have resulted but for the salvor’s intervention but also the extent of the damage had the operation been unsuccessful. A variety of experts were needed, such as naval architects, drift experts and environmental experts. In addition the accounting exercise referred to by the House of Lords in the “*Nagasaki Spirit*” was found to be a time consuming and expensive one. As a result the SCOPIC clause was negotiated. It was specifically designed to replace but to have the same effect as Article 14. It is an addendum to LOF and is only included as part of that contract if specially agreed in writing. When incorporated it replaces Article 14 of the Salvage Convention. It needs to be specially invoked by the salvor and remuneration will not begin until that point in time. There is no longer any need to prove any threat of damage to the environment. Ship owners are required to provide security in the sum of \$3M. Once invoked SCOPIC remuneration is to be assessed in accordance with a tariff plus a bonus of 25%. The assessed SCOPIC remuneration is due from the ship owner only in so far as it exceeds the traditional salvage award under Article 13. Thus if the traditional salvage award is \$1M and the assessed SCOPIC remuneration is \$1.5M the salvor will receive \$1 M from the ship and cargo pro rata to value and \$0.5M from the ship owner in respect of SCOPIC remuneration. If the

traditional Article 13 salvage award exceeds the assessed SCOPIC remuneration the Article 13 award will be reduced by the 25% of the difference between it and the assessed SCOPIC remuneration. So, if the salvage award is \$1.5M and the assessed SCOPIC remuneration is \$1 M no SCOPIC remuneration would be due and the salvage award would be reduced by \$125,000 ($1.5 - 1 \times 25\%$). The owner is entitled to terminate SCOPIC at any time after giving five days written notice provided the appropriate authorities do not object. The salvor can withdraw from the whole LOF contract if it is no longer financially viable. As soon as SCOPIC is invoked, the owner may appoint a special casualty representative (SCR) to represent all salvaged property. In addition the hull underwriters and the cargo underwriters are each permitted to send a special representative to observe and report.

It has been said that SCOPIC is in essence, a safety net, not a method of remuneration. It is also not an international solution but only one for LOF. There would be problems if it were sought to apply it as a matter of law rather than contract, e.g. who would negotiate rates, and how would they be determined. The present rates have only been changed once in 10 years (a review is pending this year). There is no currency fluctuation cause, which has caused concerns to the salvage industry.

The ISU says that there are parts which are not completely fair and logical which can result in anomalies. As an example, the discount clause (clause 7) provides that when calculating the discount the SCOPIC remuneration is to be assessed on the assumption that the clause had been invoked on day one, thereby not penalising the salvor for a late invocation of the clause. This safeguard is not given in the termination provisions (clause 9). So, If the ship owner terminates the SCOPIC clause under 9 (ii) and the salvor has to continue with the services, (because 9 (i) does not bite) the discount increases with each day that the services continue (because the calculation of SCOPIC remuneration has stopped) notwithstanding that the salvor is no longer protected by either SCOPIC or Article 14. To be even handed, the ISU suggests, there should be a notional assessment of SCOPIC remuneration until the end of the actual salvage service, before assessing the amount of the discount. Attempts to correct this have, apparently, been unsuccessful.

Since 2000 there have been 1026 LOF cases notified to Lloyds in which SCOPIC was invoked in 183 cases (18%). There have been only 7 SCOPIC related arbitrations. (Between 1992 and 1998 there were 18 Article 14 arbitrations, 8 of which were appealed).

What's changed since 1989

Some of the following factors have been identified by the ISU, others by the writer, as having changed the salvage landscape since 1989:

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- The increasing importance of environmental issues, to such an extent that such issues dictate how a salvage operation is to be carried out (or whether it is to be carried out). In place of refuge situations the primary consideration of States and Harbour Authorities relates to environmental issues.
- OPA'90
- The Oil Pollution Preparedness, Response and Co-operation Convention 1990; the HNS Convention 1996; the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001; The Bunker Convention 2001; The Wreck Removal Convention 2007.
- Salvors being exposed to third party claims under the Bunker Convention.
- The increasing exposure of salvors to criminal liability (for example *United Kingdom Water Resources Act 1991* section 85. The ISU suggests that if a transfer pipeline in a STS salvage operation were to break with resultant pollution, through stress of weather, with no fault of the salvor, it could be criminally liable under the Act).
- The EU Directive requires EU States to impose criminal sanctions for pollution caused by “serious negligence”.
- The Canadian Sea-15 Bill (amending *Migratory Birds Convention Act 1994* and the *Canadian Environmental Protection Act 1999*) has a similar effect to the EU directive.
- The political detention of salvors (eg “*Tasman Spirit*”).
- The “*Prestige*” which involved environmental claims of up to \$1 billion. If it had been salvaged The ISU queries whether the salvor would have recovered anything for the benefit conferred in respect of the environment because of the low value of the salvaged property, notwithstanding the fact that it may have prevented such claims being made against the ship owners. There have been numerous other cases of vessels which were not provided with a place of refuge. “*The Castor*” being the one which sparked the IMO’s interest in the topic of places of refuge mainly because of a perceived threat of damage to the environment. In respect of the “*Prestige*” 70,000 tonnes of oil was lost, the “*Erika*” was similar, the “*Exxon Valdez*” was 40,000 tonnes. In contrast to this the ISU estimates that its members salvaged 566,000 tonnes of pollutants in 2006 alone and over the last 13 years salvaged over 13 million tonnes. These pollutants were salvaged to preserve value as part of the operation to salvage ship and cargo. In the absence of salvaged value there is no incentive to protect the environment.
- Possibly the most significant developments are those referred to in the Bureau Veritas investigation into the salvage industry in the early 1990s, where it was concluded that international salvage resources were in serious decline as a result of a reduction in casualty rates, falling levels of remuneration and competition created by the availability of offshore support vessels and other ancillary craft leading to the withdrawal of professional salvors from the market, the reduction of dedicated salvage craft and the

closure of additional salvage stations. This report emphasised an important point made by ISU – international salvage is in the hands of comparatively few companies. As the ISU points out those companies have shareholders seeking profit. If generous awards are made they will be encouraged to stick with it and accept the risk but if they are not or if they are not paid for what they actually do, they might well move their assets to a less risk orientated business. If this were to happen, with so few international players, it could be a problem for the shipping and insurance industry - and the environment.

This last is worthy of further comment. It has led some countries to invest in providing alternative resources. For example, in Australia, as a result of a Senate enquiry, an intergovernmental agreement on the National Maritime Emergency Response Arrangement (NEMERA) was entered into in February 2008. Pursuant to these arrangements, the NEMERA has undertaken to provide an appropriate level of emergency towage capability around the Australian coastline. The Australian government agreed to establish a national capability for emergency towage at strategic locations around Australia, funded through the protection of the Sea Levy which is made under the *Protection of the Sea (Shipping Levy) Act 1981*. Interestingly, clause 5.1.9 in this agreement provides as follows:

“Subject to the right to recover costs and expenses under existing international and domestic laws and to the right to enter into commercial arrangements relating to the use of ETV assets where appropriate, including arrangements to allow for the sharing of salvage awards, the Australian government will fund the ongoing costs of the NEMERA through the Protection of the Sea Levy ...”. (Emphasis added. It is expressly provided in s.329C of the Navigation Act 1912 that governments may participate in salvage awards).

Under the NEMERA, a number of ETVs are located in strategic Australian coastal regions. AMSA has contracted the Brisbane firm, Australian Maritime Systems (AMS) Limited, in conjunction with Swire Pacific to supply and operate under AMSA's direction a 24/7 dedicated chartered ETV that will provide emergency towage and response capability in the area of the Torres Strait and Great Barrier Reef north of Cairns (the “*Pacific Responder*” has its own port in Cairns but spends the majority of its time at sea). The vessel is also engaged in maintenance of the Aids to Navigation network in this area of operation. In addition, vessels with appropriately trained crews that normally undertake existing port or other operations are contracted by AMSA to be available to be called upon in the event of an incident.

In 2006 the Australian Government announced a \$137M eight year contract for the ETV “*Pacific Responder*”. Further regional contracts were announced costing additional amounts of \$1.8M for a 5 year contract and \$15M. Under the Oil Pollution Levy Scheme, a rate per tonne of the tonnage

of a ship which is in an Australian port which had on board a quantity of oil in bulk weighing not less than 10 tonnes (whether as fuel or cargo) is liable to pay the levy. Clearly the major share of contributions is made by tanker owners. It is important to stress that this is an industry funded scheme.

There may be similar arrangements which have been made by other countries since 1989. It is understood France supports the industry and the Australian House of Representatives standing committee on transport and regional services, in June 2004, referred to the fact that the United Kingdom has four ETVs to cover 1,600 kilometres of coastline. They have a value of around £44 million and cost the United Kingdom government approximately AUD\$25 million per annum to maintain and operate. Whether those arrangements are also industry funded is not known to the writer. It is understood that there are similar funding arrangements in South Africa.

Has the time come to revisit the question of liability salvage?

The authors of an article which appeared in the *Tulane Law Review* in 2005: Volume 79 Nos. 5 and 6 entitled “The shifting nature of salvage law: a view from a distance”, Rhys Clift and Robert Gaye, a partner and solicitor respectively from the London firm of Hill Taylor Dickinson, certainly appear to have thought that the question of liability salvage needed to be revisited. In the introduction to their article they stated as follows:

“Two points are now likely to force further development of the law. One point is the combination of the fact that (apart from the limited safety-net provided by SCOPIC) under existing law the amount of a salvage reward is capped by the value of the property preserved, together with a decline in the number of salvages from which salvors can earn rewards under existing law. The result is a pressure from salvors for salvage rewards fully reflecting the liabilities from which vessels and their insurers have been saved. The second point is a possible pressure from property insurers (hull and cargo) not to pay by way of the rewards for these few salvages, for the cost of the existence of professional salvors and the maintenance of vessels and equipment dedicated to salvage, which may now seem primarily to benefit liability insurers.”

That article asked the question whether there was a shift taking place such that the predominant purpose for salvage operations is no longer the rescue of property but the prevention of damage to the environment. It suggested that liability salvage could be based on the same principles that applied in the case of *Peninsular & Oriental Steam Navigation Co v Overseas Oil Carriers Inc* 553 F.2d 830 which was a claim for life salvage by the “*Canberra*” for diverting to assist and provide medical assistance to the crew member of another vessel who had suffered a heart attack. It was held in that case that they were entitled on the basis of quasi-contract to reimbursement

for the cost of nursing and increased fuel cost for diverting. This raises the question whether salvors would be entitled to sue in quasi contract for a quantum meruit (or restitution in some jurisdictions) for the services they have rendered in minimising the potential liability of a ship owner for oil pollution damage without ever entering into an LOF.

The authors of that article pointed out that if there are fewer and fewer rewards the amount of the enhancements paid to professional salvors must increase with each reward placing more and more responsibility on property insurers. The problem is not solved as they pointed out by Article 14 or SCOPIIC unless tariff rates take account of standby costs. The authors quoted from the paper given by the Honourable Sir Barry Sheene, "Conventions on Salvage" 57 TUL.L.REV 1987 where it was suggested that liability salvage would involve an assessment of potential liabilities that would be unsatisfactory. Geoffrey Brice QC was of a similar view. In an article: "The new Salvage Convention: green seas and grey areas" (1990) LMCLQ 32, he wrote:

"When an award is made taking into account such matters, it is sometimes referred to as an "enhanced award", as if the tribunal were adding on a specific sum to what it would otherwise have awarded. It has been suggested that this sum should be identified and that liability insurers should pay it. However, this is not in my view a practical proposition.

If, for example, a tanker is on fire near a coastline, the salvor puts the fire out and then removes the cargo, his actions are concurrently preserving the ship and the cargo and removing the threat of environmental damage and claims against the ship owner. The effect of the same service is so intermingled that it is artificial in the extreme to divorce one part of the service from another and make separate awards.

There are from time to time casualties where the salvor's services are beneficial in preventing environmental damage but the salvaged fund is either non-existent or too small to permit a tribunal to make an encouraging award to the salvor or even one which will cover his expenses. Clause 1(a) of LOF 1980 went a long way to create a "safety net" for salvors in such circumstances: indeed, it broke entirely new ground. In summary, in cases involving laden tankers where the salvor is unable to earn any or an adequate award to cover his expenses, the tanker owner (ie not the cargo owner) may be ordered to pay those expenses with an increment of up to 15%. The "expenses" include a fair rebate for all tugs, craft, personnel and other equipment used by the salvor". From a commercial point of view, this "safety net" award is borne by the tanker owner's P&I Club."

The authors of the Tulane Law Review article disagreed and suggested that "in general, assessment of the extent of potential liabilities and the risk

that they would occur is not different from the assessment of danger that already has to be made when assessing a salvage award. In particular, it is not different from the assessment of potential liabilities averted that already may enhance an award for property salvage, or from the assessment of an “uplift” (up to 30%) or exceptionally up to 100%) under Article 14 of the Convention of 1989. Where arbitrators have become accustomed to assessing awards on a particular basis, they may have a feel for the level of awards, and a different basis may seem strange and nebulous. However, in time the new basis of assessment would become accustomed and natural”.

Those authors also put forward the possibility that salvage services might be performed under fixed rate contracts between vessels, liability insurers and salvors. They concluded their article by saying:

“This extension of the concept of salvage would maintain the basic idea that those who receive a benefit from voluntary services in relation to vessels and goods at sea should be rewarded in proportion to the benefit received and in a way that will encourage others to perform such services and it is surely no more radical than the shift from rewarding the recovery of property wrecked at sea to rewarding the preservation of property from shipwreck that was made by the judges of the 17th and 18th centuries.”

In a paper entitled “Whatever happened to the Salvage Convention in 1989”, Martin Davies of Tulane University made the following comments in relation to liability salvage:

“The concept of liability salvage was considered at the diplomatic conference because of a recommendation made by an international subcommittee of the CMI which had been invited by the Legal Committee of IMCO to review the principles of the law of salvage.

The recommendation was rejected because it would have required salvage arbitrators to conduct a mini-hearing on the hypothetical question of what liability would or might have occurred but for the salvor’s efforts.”

In the same paper Martin Davies quoted from the decision of the Federal Court of Australia in *United Salvage Pty Limited v Louis Dreyfus Armateurs S.N.C.* (2006) 163 FCR 151 where the first instance judge, after considering the travaux préparatoires of the Salvage Convention 1989, academic commentary and judicial authorities from other jurisdictions, considered the extent to which, if at all, the Court should take into account the vessel’s exposure to third party liabilities.

Attached are extracts from the first instance judgment of Tamberlin J. in that case (Annex 5).

The salvors were awarded A\$850,000 by Tamberlin J. Clearly unhappy with that result they appealed. On appeal the Full Court held that salvors had not established any error in the judge’s findings (including in relation to

liability to third party issues) and confirmed the trial judge's decision.

The following passage appears in the judgment on appeal:

“In relation to the topic dealt with by Article 13(1)(b), the salvor's skill and efforts in preventing damage to the environment, His Honour noted that the possible risks included the release of oil, blockage of the channel, damage to adjoining structures and, at worst, break-up of the vessel with its consequences. His Honour, however, considered that the provision was not concerned with possible, remote or hypothetical damage. It was defined in Article 1 of the 1989 Convention to mean substantial physical damage to human health, marine life or resources in coastal or inland waters or adjacent areas caused by pollution, contamination, fire, explosion or similar major incidents. In considering the events of 27 March 2002, His Honour found that there was no major incident which seriously affected, or posed a direct threat to, the environment. There was no notable escape of pollutants or any contamination which required measures to be taken. The grounding of the “*La Pampa*” and consequential salvage operations might be referred to as incidents, but they were not major incidents which affected or threatened the environment in the way spoken of in the article. Having regard to the position in which the oil was stored, well away from where there was any prospect of rupture or failure, His Honour found that there was only a remote possibility of a failure which could have led to contamination or pollution.

CMI Questionnaire

It is now appropriate to consider the results of the Questionnaire sent to NMLA's last year. It contains explanatory material which should be read with this paper.

This Discussion Paper seeks to identify the issues raised in relation to each of those articles and summarises the issues behind the questions and the responses received from NMLAs to date in relation to each of them.

Article 1 Salvage Convention

The question posed in relation to Article 1 was whether the definition in Article 1(d) which limited “damage to the environment” to “**substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto ...**” should be amended (emphasis added).

Essentially, the Questionnaire sought to ascertain the views of NMLAs as to whether that wording which has been highlighted should be deleted or whether words such as those found in other conventions (CLC, HNS and Bunker Conventions) such as “wherever such may occur” or “the exclusive

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economic zone” or the “territorial sea” should replace those words. It is suggested by the ISU that the present wording is outdated and too imprecise.

The Travaux Préparatoires of the 1989 Salvage Convention shows that the proposed wording gave rise to conflicting views as to what was intended by “adjacent waters” and also whether the words “substantial” or “major” in Article 1(d) were necessary.

The Italian MLA, in its response to the Questionnaire, drew attention to the question asked by Chile, at page 114 of the Travaux Préparatoires, which enquired what was intended by the meaning of the words “areas adjacent thereto”. The Italian MLA then quoted from the report of the Legal Committee of the IMO which had said,

“It had been agreed to limit the concept of environmental damage to damage in areas adjacent to coastal states, specifically the definition would serve to make clear that cases involving only a risk of environmental damage on the high seas would be excluded.”

The Italian MLA expressed the opinion that that opinion still holds: “but the notion of high seas should apply beyond the EEZ to which all relevant conventions (CLC, HNS and Bunker Convention) apply and that it might therefore be appropriate to replace the present definition of “damage to the environment” with one based on the scope of application of such conventions, such as the following:

“(d) damage to the environment means ... in territorial waters and in the exclusive economic zone of any State, established in accordance with international law, or if a State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State, determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured”.

All respondents to the Questionnaire to date have favoured replacement of those words with words which refer to the exclusive economic zone (or an area adjacent to the territorial sea equivalent to an exclusive economic zone).

Also, in relation to Article 1, the Questionnaire enquired as to whether the word “substantial” had been interpreted in any cases in the jurisdiction of the NMLAs or alternatively sought an expression of opinion as to whether that word is likely to create difficulties of interpretation. Apart from one Australian case, to which reference has already been made, there were no cases which explicitly discuss that word. It is worth recalling that the LOF appeal arbitrator decided in relation to the “*Castor*” that its 30,000 tons of gasoline and 100 tons of bunkers off the Spanish coast was not a substantial threat, despite it having been refused a place of refuge by at least six countries.

Responders were ambivalent as to whether or not the word “substantial” should be amended, although many States recognised that the word could

cause difficulties of interpretation. The Italian MLA, in answer to the Questionnaire, pointed out that the CMI report to the IMO (Travaux Préparatoires page 111) contained the following explanation of the word “substantial”:

“By using the words ‘substantial’ and ‘major’ as well as the reference to ‘pollution, explosion, contamination, fire’ it is intended to make clear that the definition does not include damage to any particular person or installation. There must be a risk of damage of a more general nature in the area concerned, and it must be a risk of substantial damage.”

The Italian MLA then went on to point out:

“However, during the diplomatic conference concern was expressed in respect of the words ‘substantial’ and ‘major’ by the Advisory Committee On Pollution of the Sea (ACOPS) who suggested their deletion. The following statement was made by them:

‘The ACOPS’ proposal to Article 1(d) was fairly minor and a modest one. Its purpose was to remove the distinction between substantial and possibly non-substantial and more importantly, the distinction drawn by the use of major incident compared to any other incident. It is certainly the experience of many in environmental matters that the definition of major or minor or substantial or insubstantial are very difficult to define, are generally imprecise and generally lead to the opportunity to be able to do nothing where something should be done. So the amendment basically to remove substantial from physical damage and to remove major from similar incident in that Article. Additionally, there is a desire for completion to add to resources or property on the high seas.’”

A number of delegations supported that suggestion but the majority supported their retention (Travaux Préparatoires page 117).

The Questionnaire also sought to ascertain whether the definition in Article 1(d) which refers to specific means by which such damage can be occasioned (i.e. pollution, contamination, fire, explosion or similar major incidents) would be likely to encompass an incident which gives rise to dangers to navigation, for example a loss of containers at sea. Once again, some NMLAs considered that it would be covered but others that it would not be covered.

The question arises therefore as to whether or not the definition should be widened to cover casualties which can give rise to a danger to navigation, particularly in the case of containers carrying dangerous or hazardous cargo. In short, is a danger to navigation also a threat to the environment? It is not difficult to envisage a submerged container puncturing the side of a ship and giving rise to the potential of damage to the environment.

Another topic for debate at the Salvage Convention, raised by France, concerned the definition contained in Article 1(d) and whether it should make

specific reference to “cultural heritage” (page 115 Travaux Préparatoires). Since then of course the UNESCO Convention on the Protection of the Underwater Cultural Heritage has been negotiated in 2001, which largely ignores the existence of salvage. It does however provide in Article 4 that:

“Any activity relating to underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage or law of finds, unless it:

- (a) is authorised by the competent authorities, and
- (b) is in full conformity with this Convention, and
- (c) ensures that any recovery of the underwater cultural heritage achieves its maximum protection.”

The late Geoffrey Brice QC prepared a draft Protocol to the Salvage Convention which was discussed by CMI at its Conference in Singapore in 2001 which, omitting formal parts, reads:

“Article 1

For the purpose of this Protocol:

“Convention” means the International Convention on Salvage, 1989.

“Organization” means the International Maritime Organization.

“Secretary-General” means the Secretary-General of the Organization.

Article 2

Article 1, subparagraph (a) of the Convention is replaced by the following text.’

- (a) Salvage Operation means any act or activity to assist a vessel or any other property (including services to or involving historic wreck) in danger in navigable waters or in any other waters whatsoever.

Article 3

The following text is added as subparagraphs (c)-1 and (c)-2 in Article 1 of the Convention:

- (c)-1 Historic wreck means a vessel or cargo or artefacts relating thereto including any remains of the same (whether submerged or embedded or not) of prehistoric, archaeological, historic or other significant cultural interest.
- (c)-2 Damage to the cultural heritage means damage to historic wreck including damage or destruction at the salvage site of any significant information relating to the wreck or in its historical and cultural context.

Article 4

The following text is added as subparagraph (k) in Article 13 paragraph 1 of the Convention:

- (k) in the case of historic wreck, the extent to which the salvor has: protected the same and consulted with, co-operated with and complied with the reasonable requirements of the appropriate scientific, archaeological and historical bodies and organizations (including

complying with any widely accepted code of practice notified to and generally available at the offices of the Organization); complied with the reasonable and lawful requirements of the governmental authorities having a clear and valid interest (for prehistoric, archaeological, historic or other significant cultural reasons) in the salvage operations and in the protection of the historic wreck or any part thereof; and avoided damage to the cultural heritage.”

Article 5

Article 18 of the Convention is replaced by the following text:

Article 18

Effect of the Salvor's

Misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that he salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct. In the case of historic wreck misconduct includes a failure to comply with the requirements set out in Article 13 paragraph (k) or causing damage to the cultural heritage.

Article 6

Article 30, paragraph 1(d) of the Convention is replaced by the following text:

- (d) when the property involved is historic wreck and is wholly or in part in the territorial sea (including on or in the seabed or shoreline) or wholly or in part in inland waters (including the seabed and shoreline thereof).

Since then the UNESCO Convention has been negotiated. CMI's concerns in relation to this Convention are described in CMI Yearbooks 2002 page 154-157 and 2004 pages 438 and 440.

Article 5 Salvage Convention

The Questionnaire sought to ascertain whether public authorities can pursue claims for salvage in their jurisdiction. This was not an issue raised by the ISU but was raised in the debate within CMI on Places of Refuge. Whilst the majority of countries answered to the effect that public authorities can pursue claims for salvage, there are clearly some countries where they cannot be pursued or at least where as a matter of practice the Navy, for example, does not pursue claims.

Article 11 Salvage Convention

This question sought to ascertain which countries had ratified the

Salvage Convention, whether any specific legislation or regulation had been made to give effect to Article 11 and whether NMLAs thought it would be appropriate to make express reference to the IMO Guidelines on Places of Refuge in Article 11. Of the 14 countries who have thus far responded to the Questionnaire, only Brazil, Japan and Malta have not ratified the Convention. No countries have made any express provision in relation to Article 11 and only a couple of responders thought that an express reference should be made to the IMO Guidelines on Places of Refuge or the new CMI Draft Convention on Places of Refuge. Interestingly, at the Salvage Convention 1989, the International Chamber of Shipping had recommended a stronger provision which required States to provide “ports of refuge”. One delegation had noted: “that such a provision would be undesirable, but that the problem of obtaining port access could be addressed, at least partially, by having States adopt contingency plans which would establish a mechanism for informed decision -making.” (page 283 Travaux Préparatoires) thus presaging the IMO Guidelines.

Articles 13 and 14 Salvage Convention

This is clearly the most contentious area of potential reform in relation to the Salvage Convention 1989 and relates to what is now being termed “environmental salvage”. A broad question was posed to NMLAs as to whether they would be in favour of an investigation by CMI as to whether Article 14 should be amended to create entitlement to an environmental award. The response received was mixed. Seven countries have expressed support for considering the issue and seven were opposed, although one of those, Italy, considered that Article 14 could be reconsidered. The fact that SCOPIC has been introduced as a potential replacement for Article 14 in LOF Contracts might suggest a general dissatisfaction with Article 14.

The ISU has also suggested that increasing activity by regulatory authorities has resulted in the environment being a factor in almost every salvage case, such that authorities almost always now require bunkers to be removed before any salvage work can be done, even though their removal may not be necessary for the success of the operation or even necessary to protect the environment. Such work, it is said, inevitably increases the Article 13 award to the detriment of property underwriters.

As mentioned earlier, the ISU points to the “*Prestige*” as highlighting the inadequacies of the present regime. It suggests that had the ship and her cargo been provided with a place of refuge, they could probably have been salvaged. The resultant salvage award would have been restricted by the value of property salvaged (about \$20 million) and probably have been in the region of \$10-12 million. Although the award would be limited the salvaged fund would probably have just been sufficient to avoid the need to dig into the safety net

of the SCOPIC clause. The cargo of oil remaining on board would have been contained and the cost of the cleanup of the spill would have been in the region of \$40-50 million. In the event the salvors were unable to save the ship and cargo because a place of refuge was denied, leading to claims estimated to be in the region of \$1 billion. The ISU has pointed out that very little would have been paid for protecting the environment had it been permitted to proceed with the salvage. Any enhanced award would have been capped by the salvaged value and thus would have been minimal, compared with the benefit conferred.

The ISU has suggested that whilst salvors are currently rewarded for protecting the environment under 13.1 (b) they are inadequately rewarded for what they do, because of the limit to any salvage award imposed by article 13.3 — the value of the salvaged property. As an illustration of this inadequacy they point out that like Article 14, SCOPIC is a safety net which provides for a minimum payment and that statistically SCOPIC is involved in approximately 20% of cases. Thus in 20% of all cases salvors are receiving the bare minimum. Further, whilst in the remaining cases the award may not be the bare minimum, the restriction imposed by property value means they are probably not fully rewarded for what they do in those cases.

Aside from this, it notes that such enhancement for preventing damage to the environment as is paid, is paid by property underwriters who do not insure this liability, even when Article 14, or SCOPIC, is involved. Article 14 or SCOPIC is only paid to the extent that their assessment exceeds the traditional salvage award under Article 13. Most Article 14 and SCOPIC cases also involve an Article 13 award and statistically approximately only 50% of the assessment is actually paid under either Article 14 or SCOPIC. The balance is paid as a traditional salvage award under Article 13.

Their suggested solution to this is to amend Article 13 by deleting Article 13.1 (b) (the skill and effort of the salvor in preventing or minimising damage to the environment) and reintroducing it in a revamped Article 14.

A further question was asked as to whether, if the Salvage Convention was amended to provide an environmental salvage award, Article 20 should be amended to create a statutory lien. Whilst a couple of countries thought this was appropriate, the majority considered that it was not necessary, for example, as it would be a maritime lien within its jurisdiction in any event.

This question to NMLA's also sought to ascertain whether or not countries had made any provision, such as is provided for in Article 13, paragraph 2, for the payment of a reward to be made by one of the respective interests. None of the respondent countries have made any such provision in their legislation and only one country thought it would be of benefit for the Convention to identify the ship owner as being the party who should primarily be responsible for the payment of claims and the provision of security in container cases. (It is understood that Belgian law provides scope

for enforcement against the diverse interests of the adventure).

The ISU has identified problems in recent years in the salvage of container ships, which are becoming larger and larger, and which has given rise to problems in collecting security from cargo interests. Sometimes it is not obtained at all or, when it is provided, the cargo often remains unrepresented and has to be given notice of pending arbitration, an award and an appeal award, all causing considerable expense and delay. In one case 6,000 TEU containers were involved comprising 4,486 individual interests. Only 3,066 were involved in the arbitration and of those 1,055 were unrepresented. Consideration has been given to exempting lower value cargoes under an amended wording in the LOF. Alternatively the ISU has suggested that ship owners be responsible for the provision of cargo security, and including its liability in its claim for General Average (under Rule VI of the York Antwerp Rules 2004 it is provided that where one party pays another's contribution it can have it taken into account), or include a General Average absorption clause in its hull policies, (which would cover \$1 M) and take out another policy for excess liability.

In respect of unrepresented cargo it has been suggested that the LOF Contract could state that if cargo had not appointed someone to represent it within a short period Lloyds could do so.

The ISU has suggested the following amendments to the Convention:

“Article I

- d) “Damage to the environment” means physical damage to human health or to marine life or resources in any area(s) where salvage services are being rendered to a vessel, her bunkers or cargo, caused by pollution, contamination, fire, explosion or similar major incidents or to a vessel her bunkers and her cargo which is or may become a hazard or impediment to navigation or may reasonably be expected to cause harmful consequences to the marine environment or damage to the coastline or related interests of one or more States”

Revised Article 13

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- (a) the salvaged value of the vessel and other property;
- (b) the measure of success obtained by the salvor;
- (c) the nature and degree of the danger;
- (d) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (e) the time used and expenses and losses incurred by the salvors;
- (f) the risk of liability and other risks run by the salvors or their equipment;
- (g) the promptness of the services rendered;

- (h) the availability and use of vessels or other equipment intended for salvage operations;
- (i) the state of readiness and efficiency of the salvor's equipment and the value thereof.
- (j) Any award under the revised Article 14.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to the right of recourse of this interest against other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. The rewards, exclusive of interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

4 For the avoidance of doubt no account shall be taken under this article of the skill and effort of the salvor in preventing or minimising damage to the environment.

Aside from the omission of the existing Article 13.1 (b) the only other change to Article 13 is the inclusion of the words in Article 13.4 which have been inserted for clarity.

Revised Article 14

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its bunkers or its cargo threatened damage to the environment he shall in addition to the reward to which he may be entitled under Article 13, be entitled to an environmental award. The environmental award shall be fixed with a view to encouraging the prevention and minimisation of damage to the environment whilst carrying out salvage operations, taking into account the following criteria without regard to the order in which they are presented below.

- (a) any reward made under the revised Article 13
- (b) the criteria set out in the revised Article 13.1(b) (c) (d) (e) (f) (g) (h) and (i)
- (c) the extent to which the salvor has prevented or minimised damage to the environment and the resultant benefit conferred.

The ISU accepts that there needs to be a cap on any potential environmental award and suggests two options:

14.2.

Option 1

Any environmental salvage award shall not exceed US \$250 per gross ton of the vessel, the subject of the salvage services, however for the purposes of this Clause, the minimum gross tonnage of any vessel shall not be less than 20,000. or

Option 2

“An environmental award shall not exceed the amount of the ship owner’s limitation fund under the CLC 1992, the HNS Convention 1996, the Bunker Convention 2001, or the 1996 LLMC Protocol or their respective successors, whichever may be appropriate to the circumstances of the case.”

- 14.3. For the avoidance of doubt, an environmental award shall be paid in addition to any liability the shipowner may have for damage caused to other parties
- 14.4 Any environmental award shall be paid by the shipowners
- 14.5 If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any environmental award due under this article
- 14.6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

The ISU has explained that:

- under such a proposed Article 14.1, an arbitrator could make an environmental award whenever there is a threat of damage to the environment. The salvor does not have to actually prevent damage to the environment, which is the position under the existing Article 14. The major difference is that under the Convention, the recovery is limited to expenses. In circumstances in which the services do not prevent damage to the environment, the ISU anticipates that a salvor would at least be awarded the cost of the operation. Where there is success achieved, it is anticipated that a more generous reward will be available subject to the overall cap. However, in this draft it has been left to the discretion of the tribunal;
- the proposal in effect avoids the vexed problem of liability salvage. There is no need to prove a liability though its possibility would be relevant to Article 14.1(b) – “the measure of success obtained by the salvor”;
- if its proposals for environmental salvage are accepted, there would need to be a statutory lien created against the ship for such a claim or a clarification made that environmental salvage should be considered part of the existing salvage lien. Geoffrey Brice pointed out in his LMCLQ article (referred to earlier) that the Arrest Convention 1952 does not include “Special Compensation” (under Article 14) as a maritime or statutory lien. The more recent Arrest Convention 1999 remedies this in Article 1.1(c) where maritime claim includes one arising from: “salvage operations or any salvage agreement, including if applicable, any special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment”. This Convention is not yet in force;
- under the CLC 1992, the Fund Convention 1992 and the HNS Convention, an owner and its insurer may have taken into account the cost to it of any

preventive measures. An environmental award would, it is thought, be a reasonable preventive measure when valid claims under those conventions are made. Thus an owner should be able to have it taken into account when faced with other claims under the CLC or be able to reclaim it from the 1992 Fund if the CLC is exceeded.

The ISU suggests that there may be circumstances in which a ship owner could participate in its own pollution limitation fund with other claimants under either the CLC or Fund Conventions, depending on whether limits are reached on the basis that an environmental salvage award was a result of its entering into a reasonable contract to prevent and/or mitigate damage to the environment. To date it seems that claims for damage caused to ecosystems are not admissible by the IOPC Fund and thus preventive measures relating to their avoidance would not be covered. (The same concepts of pollution damage and preventive measures apply under the 1992 CLC and Fund Conventions. For a discussion on these topics see the 1992 Funds Claims Manual, December 2008 edition, paragraph 3.1.15.)

It will be noted that the ISU does not suggest that SCOPIC or any similar scheme be adopted in any new convention as it regards it as a safety net (a means of assessing a minimum payment) rather than a means of remuneration and does not in its view resolve the current problem.

Article 16 Salvage Convention

This question asked whether NMLAs considered that Article 16 should be amended to ensure that life salvage claims should be made against the owners of property salvaged rather than the salvor. Seven NMLAs answered in the affirmative, including China which expressed the view that life salvage should be kept entirely separate from property and does not consider the present provision is conducive to the encouragement of property and environmental salvage (China considered that a separate lifesaving fund should be established) and seven NMLAs considered that no change was necessary.

The ISU has pointed out that prior to the 1989 Convention, claims for life salvage would have been made directly against the owners of the property but as a result of the language used in the Convention, such claims now can be made against the salvor. It points out that this could create a problem for the property salvor if it was not involved in the life salvage, which is often the case.

The salvage claim under Article 13 and special compensation under Article 14 would under normal circumstances be restricted to the work that has been carried out and the expense incurred and not include the effort of a third party over which it had no control. So whilst liable to the life salvor, the property salvor will have received nothing for the work done in saving life.

This, it is suggested, would be an injustice to the property salvor. The ISU therefore suggests a correction to the wording to ensure that any life salvage claims are made directly against property rather than the salvor.

This matter was debated at the 1989 Convention. The ISU (Travaux Préparatoires, page 425) had expressed the opinion that a salvor of life, unless he was a servant, agent or subcontractor of the property salvor, should pursue his claim directly against the property and not the salvor who salvaged the property. Since life salvage was not an element in assessing the reward under Article 13, it would be unfair if the property salvor had to pay the life salvor when that salvage was not considered in assessing the property salvor's reward.

The Norwegian delegation (Travaux Préparatoires, page 426) had proposed a provision to the following effect:

“Nothing in this Convention shall prevent a contracting State from introducing National regulation in respect of salvage of persons, granting life salvors rights and remedies in addition to those granted by the Convention.”

Whilst there was some support for that proposal, many delegations opposed it. The draft prepared by the CMI for the Montreal Conference provided for an entitlement being given to a salvor of human life to a fair share of any payment due under the Convention. Furthermore a salvor who, at the request of any party concerned or a public authority, has salvaged or undertaken to save any persons from a vessel in danger was to be entitled to compensation equivalent to his expenses under the equivalent provision of Article 14. Left in square brackets was a possibility that a salvor who has actually salvaged any person from the vessel is entitled to a special reward, taking into account the criteria in the equivalent provision of Article 13 but not exceeding twice the salvor's expenses. Under those two extensions it was also provided that any recovery would not exceed any sum payable under paragraph 1 of the article. And it was also provided that any of the extended payments were to be payable by the owner of the vessel in danger or the State in which that vessel was registered. During the Conference such provisions were jettisoned and the provision which is now contained in Article 16.2 was agreed.

Article 27 Salvage Convention

This question to NMLA's enquired as to whether NMLAs considered that Article 27 should be amended to reflect the position achieved by the Lloyd Salvage Group, namely the publication of awards unless any party objects. Whilst five respondents agreed that Article 27 should be amended, six did not agree. Denmark supported the publication of awards provided parties agreed and considered that it should be left to national law and the

parties to determine this issue and not the Convention. France also supported the publication of a summary of an award without names of the parties as happens in France already. The Greek MLA believed tribunals should have the power to publish awards where they may be of interest to others.

The ISU is in favour of awards being published. The LSSA clauses, which apply to LOF, are to be amended so that publication will take place as a matter of course unless any party to the arbitration objects. The draft presented to the CMI Montreal Conference contained this provision:

“Contracting States shall take the measures necessary to make public arbitral awards made in any salvage case.”

This was in square brackets, suggesting that there was not unanimity in the drafting committee on that provision. The Montreal Conference Draft Convention which was approved contained the following provision:

“Contracting States shall encourage, as far as possible and if need be with the consent of the parties, the publication of arbitral awards made in salvage cases”

i.e. much the same as the Convention but with the words “if need be” deleted. There was considerable debate on this provision (Travaux Préparatoires pages 499-513). That debate principally concerned whether the words “with the consent of the parties” should remain in the text.

General

Finally, NMLAs were asked whether there were any other issues or problems which they considered should be looked at.

- The Maritime Law Association of Australia and New Zealand suggested that Article 13 should be amended to expressly exclude from consideration the issue of whether a salvage reward should take account of potential liability to third parties. Geoffrey Brice QC in his book “Maritime Law of Salvage” at paragraph 2.127 expressed the opinion that this did not form part of the considerations to be taken into account when assessing the nature of the damage faced by the salvor. He said:
“‘Danger’ and threat of claims or litigation

However, to take into consideration the removal by the salvor of the prospect of pure legal claims against the owners of the salvaged property as such is probably not warranted by the Convention whether as part of the services or as a danger. Such a consideration goes beyond considering threats to life or property. It might involve consideration of matters of legal responsibility (where for example shipbuilding sub-contractors could be involved in the case of a mechanical breakdown), of questions of limitation of liability and numerous other extraneous matters: it is submitted that these are not proper subjects for investigation in a salvage suit.”

Geoffrey Brice QC did however consider that prevention of third party claims arising from the casualty will be reflected in the application of criterion (c) of Article 13.1. In his book he went on to say:

“Success, benefit and third party claims

2.127A As indicated above, in most cases where the question arises prevention of third party claims will be a feature of the services and a part of the “useful result” thereby achieved. The sum of the service is the benefit that the salvaged property and its owners derive from it. The benefit conferred is likewise a measure of the success of the salvage service and its merits. Thus in most cases prevention of third party claims arising from the casualty will be reflected in the application of criterion (c) of Article 13.1.

2.127B The following are examples of services averting potential liability which it is submitted enhance the merits of a service:

- (a) Preventing fire spread to other vessels and shore installations;
- (b) Taking in tow a vessel drifting in a crowded anchorage;
- (c) Preventing a vessel from grounding and blocking the entrance to a port thereby affecting the commercial interests of the port and its users;
- (d) Preventing a casualty grounding on a coral reef which forms part of coastal resources; and
- (e) Avoiding an escape of oil likely to affect the operation of a nearby power station.

It will be noted that all of the above involve either potential physical damage to property or interference with its legitimate use as a direct result of the casualty.”

- Germany suggested that the definitions of “ship” and “property” in Articles 1(b) and (c) of the Convention should be reconsidered in view of the definition of “wreck” in Article 1 of the Wreck Removal Convention. It also suggested that consideration might be given to defining the vessel owner so that not only the registered owner but the owner pro-hac vice (i.e. the operator or bare boat charterer) could also be included. Finally, Germany suggested that the salvor’s misconduct (Article 18) should not affect the claim of a third party salvor of human life for a share of the salvage award pursuant to Article 16(2).

Enquiries were also made of NMLA’s as to the number of cases had been decided in their jurisdiction under the 1989 Salvage Convention. No more than 20 were identified, although that does not include arbitrations.

The Way Forward

If the CMI believes there is merit in further pursuing this review the options available include:

Review of Salvage Law

- Drafting a new Salvage Convention, or
- Drafting a Protocol to the Salvage Convention and/or
- Assisting in redrafting LOF
- Assisting the interested parties in further discussions
- Continuing to debate the topics in CMI forums, which it will be doing in Buenos Aires in October (24-27) in any event.

Commentary

[A] It would be of interest to know to what extent salvage awards under Article 13 have been enhanced by reason of the addition of the criterion in Article 13(1)(b) “the skills and efforts of the salvors in preventing or minimising damage to the environment”.

Can the introduction of Article 13 1 (b) be said to have had any appreciable bearing on the level of awards? I am indebted to Ben Browne (of Thomas Cooper) for making available to me a paper he gave at the end of last year on “Trends and Developments in Salvage Law and Practice” and directing me to the LOF statistics published on the Lloyds website, which I reproduce below.

“1. LOF statistics

Year	New Cases	Scopic Invoked	Settlements	Salvage Awards Published (Original)	Salvage Awards Published (Appeal)	Total Salvage Award (and % paid through Lloyd's - \$1,000)	Article 14/SCOPIC Awards Published	Article 14/SCOPIC Awards Published	Total article 14/SCOPIC Awards*
1990	178	n/a	91	51	31	\$27,589 (77%)	-	-	-
1991	173	n/a	127	63	21	\$33,622 (76%)	-	-	-
1992	169	n/a	105	72	22	\$53,825 (81%)	2	-	\$1,718,373
1993	156	n/a	104	58	16	\$28,980 (58%)	4	-	\$707,128
1994	142	n/a	110	40	18	\$39,633 (69%)	3	2	\$948,881
1995	121	n/a	78	47	25	\$36,745 (85%)	2	-	\$318,633
1996	121	n/a	94	24	15	\$37,528 (85%)	2	2	\$1,485,719
1997	104	n/a	75	33	16	\$24,656 (77%)	2+	1	\$3,154,183
1998	100	n/a	64	30	10	\$20,579 (83%)	3	1	\$1,970,944

Discussion Paper for Review of Salvage Convention, by Stuart Hetherington

Year	New Cases	Scopic Invoked	Settlements	Salvage Awards Published (Original)	Salvage Awards Published (Appeal)	Total Salvage Award (and % paid through Lloyd's - \$1,000)	Article 14/SCOPIC Awards Published	Article 14/SCOPIC Awards Published	Total article 14/SCOPIC Awards*
1999	123	14	77	30	11	\$26,020 (84%)	-	2	\$2,564,654
2000	133	16	67	22	13	\$28,030 (77%)	-	-	-
2001	108	23	82	35	17	\$26,904 (78%)	3	-	\$2,662,876
2002	104	18	55	32	15	\$39,422 (72%)	1	-	\$555,692
2003	89	27	46	29	11	\$24,919 (84%)	1	-	\$1,088,143
2004	91	13	64	14	6	\$14,318 (89%)	-	-	-
2005	109	20	46	18	5	\$14,193 (88%)	-	-	-
2006	80	11	40	19	3	\$11,672 (79%)	-	-	-
2007	107	23	43	22	11	\$58,168 (59%)	-	-	-
2008	83	15	46	20	9	\$21,385 (60%)	2	-	\$8,141,794
2009	122	17	42	16	7	\$116,766 (75%)	0	0	0

* Article 14 Awards/Scopic Awards

+ The Award was for \$4,000,000 and was appealed, however, the case was settled before the appeal arbitration was head. The settlement is believed to have reduced the Award by 4.4%. Salvage Awards 2009 -A The Council of Lloyd's also published 3 Award relating to costs which are not included in the above statistics.

VALUES (\$1,000,000)

Year	Ship	Cargo	Other	Total	%Awards to Values
1990	\$284.2	\$268.6	\$6.9	\$559.7	4.9
1991	\$277.3	\$323.5	\$12.5	\$613.3	5.5
1992	\$389.4	\$436.2	\$17.8	\$843.4	6.4
1993	\$150.4	\$169.3	\$4.0	\$323.7	8.9
1994	\$119.2	\$178.2	\$6.7	\$304.1	13.0
1995	\$193.3	\$244.0	\$5.6	\$442.9	8.3
1996	\$182.9	\$111.0	\$4.2	\$295.1	12.5
1997	\$169.1	\$326.4	\$13.0	\$508.5	4.8

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Year	Ship	Cargo	Other	Total	%Awards to Values
1998	\$101.0	\$61.0	\$3.8	\$165.8	12.5
1999	\$53.3	\$79.9	\$5.8	\$139.0	18.8
2000	\$61.0	\$194.4	\$7.5	\$262.5	10.7
2001	\$50.9	\$107.6	\$2.5	\$161.0	16.7
2002	\$81.5	\$173.3	\$6.6	\$264.4	14.2
2003	\$72.8	\$94.0	\$2.3	\$169.1	14.7
2004	\$47.1	\$93.9	\$3.9	\$144.9	9.9
2005	\$64.5	\$119.8	\$1.3	\$181.6	7.8
2006	\$53.7	\$31.6	\$0.5	\$85.8	13.6
2007	\$172.6	\$210.6	\$9.5	\$392.7	14.8
2008	\$203.8	\$92.0	\$3.6	\$299.4	7.1
2009	\$161.2	\$401.0	\$8.9	\$571.1	20.4

There has been a steady trend downwards in the number of awards since the early 1990s. From a high of 72 in 1992 last year saw only 16 awards. However those 72 awards in 1992 generated total salvage awards of \$53,825,000 (an average of \$747,569) compared with 2009 which generated awards of \$116,766,000 (an average of \$7,297,894). 2009 may not however be representative. 2008, for example, had 20 awards which generated \$21,385,000 (an average of \$106,750). It would be of interest to know which awards were responsible for such a high 2009 figure and what can be ascribed to the large increase. It is understood that Lloyds have been encouraging salvors to report cases not hitherto reported to them as they were too small and feared Lloyds would make a charge; they were so successful last year that one salvor reported 47 cases that he would not normally have reported as they were too small. The real figure, by comparison with previous years, may therefore be 75.

The previous highest year was 2007 which generated total salvage awards of \$58,168,000 (an average of \$2,644,000). 2009 has therefore achieved a twofold increase on that from 6 less awards (22 compared with 16).

Clearly there are on average at least twice as many settled cases as published awards. It might be assumed that settlements are driven by the expectations of parties based on known results from arbitration awards and the figures disclosed on the website might therefore be considered to be representative.

Ben Browne referred in his paper to the fact that according to Lloyd's records, SCOPIC has been invoked 197 times between August 1999 and the end of 2009. He said:

“Over 96% of SCOPICS have settled. SCOPIC is incorporated into about a third of LOFs and is invoked in about 18% of all LOF cases. It is now established overwhelmingly as more workable than article 14 and the main choice for salvors' special compensation.

How salvors are doing commercially is not very clear. The last [SU statistics to be produced only went up to 2005 when it was shown that just under 85% of ISU salvage income was from LOF work. SCOPIC revenue has been rising throughout the last ten years as has wreck removal income. In all these circumstances, it is reasonable to assume that salvors are doing reasonably well out of salvage and the fact that salvage companies have proved to be desirable targets for mergers and takeovers supports this. Many of you will have read that Smit has recently merged with Boskalis but with a guarantee that for the first two years at least there will be no change in the way that Smit operates.”

The question arises as to whether mergers and takeovers take place in this industry out of necessity or desirability.

[B] It would equally be of interest to know to what extent arbitrators do take third party liability into account.

The Australian decision referred to above shows that “liability salvage” does have some role to play in appropriate circumstances, at least in that jurisdiction. As has been pointed out Geoffrey Brice QC accepted that the prevention of third party claims will be reflected under the criterion in Article 13(1)(c). It might be a worthwhile exercise to consider from published awards since the Convention became applicable what allowances have been made under those two criteria. Such a review might also assist in determining whether the salvaged value cap has precluded greater amounts being awarded. Anecdotal evidence of these matters would be of assistance to the IWG.

[C] Assuming that arbitrators do give sufficient emphasis to Article 13.1(b) and (c) the further question arises as to whether they are limited in what they can do by reason of the salvaged values. If that can be demonstrated then if the present regime is to be improved the question is whether the law of salvage needs to be amended in order to remove the limitation or cap placed on any reward with reference to salvaged values generally or whether a special “environmental award” needs to be provided for and if so what, if any, cap or limitation should it have.

[D] The ISU has sought to define what it means by “damage to the environment” in its revised definition of Article 1. Is that definition still too imprecise and too vague? It refers to “physical damage to human health, marine life or resources”. Does it need also to refer to hindrance to marine activities, fishing, impairment of quality for use of sea water, reduction of amenities etc or do all such references only tend to highlight the difficulty of defining what is intended? Do the Guidelines on Oil Pollution Damage (1994) prepared at the CMI conference in Sydney in 1994, which sought to identify the types of loss and damage which might be recoverable by a claimant arising from oil pollution damage, provide any assistance?

- [E] If an independent right to an award for such services is to be established then clearly it would be the ship's liability insurer who would have to meet that liability. If it is correct that a large proportion of all salvage work now involves steps taken to protect the environment has the time come to consider whether it would be more equitable for a ship's liability insurer to have a liability for an agreed percentage of all salvage awards so that, for example, an understanding is reached between such liability insurers and property insurers that a certain percentage of all such awards will be met by those liability insurers? The precedent for such an arrangement would be the three-fourths I one-fourth apportionment of collision liability.
- [F] A further matter for consideration might be the reconsideration of Article 14 or SCOPIC so that any compensation payable pursuant to that provision to salvors be extended to take account of any "liability salvage" which might have been achieved.

Issues for Debate

Without wishing to confine any discussion at the ISC meeting, the IWG would welcome discussion and debate on the following general topics:

1. Does the present regime provide sufficient reward to salvors for what they do and encourage them to retain suitable vessels and equipment to meet the needs of assisting vessels capable of doing substantial damage to people, property and the environment?
2. Would the ISU's proposed changes to salvage law make a significant difference to the financial capacity of salvors to react to major incidents around the world?
3. Is the current apportionment of liability between property underwriters (ship and cargo) and liability underwriters (ship only) for preventing or minimising damage to the environment, appropriate. Should a change be made?
4. Are government efforts (whether government funded or industry funded) to support the salvage industry sufficient and likely to continue and do they make it unnecessary to change the law of salvage?
5. Do Articles 13 and 14 need to be revisited and in particular:
 - should a new category of salvage award (environmental salvage) be created? Does the ISU proposal provide a possible solution?
 - should a further criterion be introduced in Article 13 relating to liability salvage?
 - should the present cap or limitation relating to the salvaged value be abandoned for all or some awards?
 - can the remuneration obtainable under Article 14/SCOPIC be extended to take account of efforts taken to protect the environment and/or reduce the ship's exposure to third party liabilities?

- are there any other solutions to meet the concerns of salvors that they are not presently adequately compensated in relation to activities they undertake as part of their efforts to save a vessel and its cargoes which incidentally prevent damage to the environment or reduce (whether by eliminating or minimising) the ship owner’s liabilities to third parties, whether civil or criminal?
 - can insurance arrangements be so adapted that the ship’s liability insurers accept liability to pay a proportion of all salvage awards in order to reflect the benefits ship owners obtain from a successful salvage?
6. Are there significant problems in practice with the:
- definitions in Article 1 of the Salvage Convention 1989: “damage to the environment”, “ship” and “property”; and is a definition of “vessel owner” needed?
 - provision of security and management of claims arising from large container ship cases (Article 13)
 - the manner in which life salvage claims are required to be dealt with under the Convention (Article 16), and
 - the arrangements under the Convention for publication of awards (Article 27).
7. Should the Brice Protocol be included in any new Convention or Protocol to the Salvage Convention?

ANNEX 1**COMITE MARITIME INTERNATIONAL, AISBL****PRESIDENT**

Singapore, 9th July 2009

Presidents of All National Associations

Dear President,

Salvage Convention 1989

I enclose a Questionnaire which has been prepared by the newly constituted International Working Group to consider the Salvage Convention 1989.

Stuart Hetherington has kindly agreed to act as Chairman of the CMI IWG on this subject and the IWG consists of Executive Councillors: Chris Davis and Mans Jacobsson, as well as Archie Bishop, Jorge Radovich and Diego Chamí.

Please submit your responses to the Questionnaire as soon as possible to enable the work of the IWG to progress. It is hoped that this topic will be on the agenda for the Colloquium to be held in Argentina in 2010.

Yours sincerely,

Karl-Johan Gombrii

KARL-JOHAN GOMBRII C/O NORDISK DEFENCE CLUB (SINGAPORE) PTE LTD,
159 TELOK AYER STREET, 068614 SINGAPORE
TEL: +65 6220 2300 E-MAIL: kjgombrii@nordisk.no FAX: +65 6220 3312
REGISTERED OFFICE CMI, AISBL: EVERDIJSTRAAT 43, 2000 ANTWERPEN, BELGIQUE
www.comitemaritime.org

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ANNEX 1

**COMITE MARITIME INTERNATIONAL
SALVAGE CONVENTION
QUESTIONNAIRE TO MEMBER ASSOCIATIONS**

The CMI Executive Council has set up an International Working Group (IWG) to consider whether any changes need to be made to the Salvage Convention 1989.

The questionnaire which follows has been developed with a view to collecting your views on areas which have been identified by the International Salvage Union as possibly needing reform.

We would be grateful if you would provide your responses to this questionnaire as soon as possible.

1. Article 1 in the Salvage Convention 1989 contains the following definition:

"For the purpose of this Convention:

- (d) *Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents."* (Emphasis added)

Comments

1.1 The International Convention on Civil Liability for Oil Pollution Damage, 1992, defines "Pollution damage" in Article 1 paragraph 6 as meaning:

- "(a) *loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profits from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken."* (Emphasis added)

Article II of that Convention also provides:

"This Convention shall apply exclusively:

- (a) *to pollution damage caused:*
- (i) *in the territory, including the territorial sea, of a Contracting State, and*
- (ii) *in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;*
- (b) *to preventive measures, wherever taken, to prevent or minimise such damage."* (emphasis added)

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The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 defines damage in Article I paragraph 6 as meaning:

- “(b) loss of or damage to property **outside the ship** carrying the hazardous and noxious substances caused by those substances;*
- “(c) **loss or damage by contamination of the environment** caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;”* (emphasis added)

Article III of that Convention provides as follows:

“This Convention shall apply exclusively:

- “(a) to any damage caused **in the territory, including the territorial sea** of a State Party;*
- “(b) to damage by contamination of the environment caused in the **exclusive economic zone** of a State Party, established in accordance with international law, or, if a State Party has not established such a zone **in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;***
- “(c) to damage, other than damage by contamination of the environment, **caused outside the territory, including the territorial sea**, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and*
- “(d) to preventive measures, **wherever taken**”* (Emphasis added)

The International Convention on Civil Liability for Bunker Oil Pollution Damage (2001) provides as follows:

Article I paragraph 9 defines “Pollution damage” as meaning:

- “(a) loss or damage **caused outside the ship** by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;”* (Emphasis added)

Article II provides as follows:

“This Convention shall apply exclusively:

- “(a) to pollution damage caused:*
 - “(i) **in the territory, including the territorial sea**, of a State Party, and*

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(ii) ***in the Exclusive Economic Zone of a State Party, established in accordance with international law, or, if a State Party has not established such a Zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the base lines from which the breadth of its territorial sea is measured***

(b) *to preventive measures, wherever taken, to prevent or minimise such damage.*" (Emphasis added)

It will be seen that the International Conventions that deal with the liability for causing pollution are not as restrictive in the geographical scope of the Convention as the definition contained in the Salvage Convention in Article 1(d) quoted above. It will be seen that the words emphasised in that definition leave considerable scope for debate as to what is intended by those limiting words, particularly when the liability conventions seem to envisage preventive measures being taken anywhere, including on the high seas and the pollution damage itself can take place anywhere within the exclusive economic zone.

Question:

- 1.2 Do you consider that the words emphasised above in the definition contained in Article 1(d) of the Salvage Convention ("in coastal or inland waters or areas adjacent thereto") should be deleted?
 - 1.3 Alternatively do you think words such as those used in the other Conventions which have been quoted above (eg "where ever such may occur"/"exclusive economic zone"/"territorial sea") should replace those words in Article 1(d) of the Salvage Convention?
 - 1.4 Have there been any reported cases in your jurisdiction in which the word "substantial" (which is contained in Article 1(d) of the Salvage Convention), as used in that definition, have been interpreted?
 - 1.4.1 If so, could you provide a copy of the decision?
 - 1.4.2 If there have been no such cases in your jurisdiction do you think it likely that the word "substantial" could create difficulties of interpretation?
 - 1.4.3 If so, do you consider that there is any other word or group of words that could better identify what is intended by the definition?
 - 1.5 Do you think that where an incident occurs that could give rise to dangers to navigation (for example a loss of containers at sea) would be covered by the definition in Article 1(d) (ie do you think it would be held in your jurisdiction to come within the meaning of the words "or similar major incidents")?
 - 1.5.1 If you think there is a risk that such incidents may not be covered by the definition in Article 1(d), do you think that the definition should be widened?
 - 1.5.2 If so, can you suggest any wording that you think might be appropriate?
2. **Article 5 in the Salvage Convention 1989 provides as follows:**
- "Salvage operations controlled by public authorities
1. *This convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.*

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2. *Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.*
3. *The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated."*

Question:

- 2.1 Can public authorities pursue claims for salvage in your jurisdiction?
- 2.2 If they cannot, do you think it would improve their position if Article 5 paragraph 3 was deleted or amended?

3. **Article 11 in the Salvage Convention 1989 provides as follows:***"Co-Operation*

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

Comment

- 3.1 The International Working Group on Places of Refuge asked questions in its first questionnaire in relation to this provision. In order to assist the IWG on the Salvage Convention we repeat the first three questions that were posed in that questionnaire as follows:

Questions:

- 3.2 Has your country ratified the Salvage Convention 1989?
 - 3.2.1 If so, has it enacted any legislation or regulation to give effect to Article 11?
 - 3.2.2 If so, please supply a copy, if possible with a translation into English or French.
 - 3.2.3 Do you think this Article should be amended to refer to the IMO Guidelines on Places of Refuge (Resolution A.949(23)) Adopted in December 2003.

4. **Article 13 of the Salvage Convention 1989 establishes the "Criteria for Fixing the Reward". Paragraph 2 of Article 13 provides as follows:**

"Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence."

Comment

- 4.1 In recent years the salvage of container ships, which continue to grow in size, has given rise to problems in collecting security from cargo interests. Thousands of

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interests are often involved and it can take months to collect security. Often it is not obtained at all. Further, even when security is provided, cargo often remains unrepresented and has to be given notice of a pending arbitration, an award, and an appeal of an award, causing considerable expense and delay. It has been suggested that the problem could be solved if, in container ship cases, ship owners were responsible for the provision of cargo security.

Question:

- 4.2 Has your jurisdiction made any provision, as provided for in Article 13 paragraph 2 for the payment of a reward by one of the interests referred to in the opening sentence of this paragraph?
- 4.3 Do you think it would be appropriate to specify in this Article that in containership cases the vessel only is responsible for the payment of claims (and therefore would be responsible for the provision of security) subject to a right of recourse against the other interests for their respective shares?
5. **Article 14 in the Salvage Convention 1989 provides as follows:**

"Special Compensation

1. *If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.*
2. *If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.*
3. *Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).*
4. *The total special compensation under this article shall be paid only if and to the extent that such compensation is granted than any reward recoverable by the salvor under article 13.*
5. *If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.*
6. *Nothing in this article shall affect any right of recourse on the part of the owner of the vessel."*

Comment

- 5.1 Over time this provision proved to be cumbersome, expensive to operate and uncertain in outcome. It also became counter-productive and discouraged rather than encouraged the salvage industry. As a result industry devised SCOPIC to replace article 14 contractually. SCOPIC has been successful and has

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substantially cut down the amount of litigation following a salvage operation. It is, however, only relevant in about 20% of modern cases and is still only a safety net.

Question:

- 5.2 Do you consider that consideration should be given to amending article 14 in order to create an entitlement to an environmental award? (It is recognised that there are "political" issues involved as to who would pay for such an award but the IWG would be interested to know whether your MLA would be in favour of an investigation of this issue. It is also recognised that if you answer this question in the affirmative, consequential changes may need to be made to the definition of "damage to the environment" in article 1(d), to article 13, article 15 and article 20).

6. **Article 16 of the Salvage Convention 1989 provides as follows:**

"Salvage of persons

1. *No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject."*
2. *A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for saving the vessel or other property or preventing or minimizing damage to the environment."*

Comment

- 6.1 Prior to the Convention life salvage claims would have been made direct against the owners of the property, but as a result of the Convention it would appear that such claims now have to be made against the salvor. This could create problems for the property salvor if it was not involved in the life salvage, which is often the case. The salvage claim which the salvor makes under Article 13 and any claim for special compensation under Article 14 would under normal circumstances be restricted to the work that has been carried out and the expense incurred and not include any effort by some third party over which the salvor had no control.

Question:

- 6.2 Do you consider that the wording of this Article should be amended to ensure that any life salvage claims against property are made directly against a property owner rather than the salvor?

7. **Article 20 of the Salvage Convention 1989 provides as follows:**

"Maritime lien

1. *Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.*
2. *The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided."*

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Question:

7.1 If you are of the opinion that the suggestions made for reform of article 14 should be considered, do you also agree that article 20 should be amended to create a statutory lien against the ship for such a claim?

8. **Article 27 of the Salvage Convention 1989 provides as follows:**

"Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases."

Comment

8.1 The ISU is in favour of the publication of awards. The Lloyds Salvage Group has recently agreed to amend the LSSA clauses so that awards are published as a matter of course, unless any party to the arbitration objects. There is clearly a conflict between the expectation that arbitrations will be conducted in private.

Question:

8.2 Do you consider that article 27 should be amended to reflect the position achieved by the Lloyds Salvage Group?

9. **General - Question:**

9.1 Are there any other issues or problems that you are aware of in relation to the Salvage Convention 1989 which the IWG should consider for possible amendment?

9.2 How many salvage cases have been decided in your jurisdiction under the 1989 Salvage Convention?

June 2009

ANNEX 2

Report of the IWG on the Salvage Convention meeting held in London on 18th September 2009

1. As previously scheduled, the first meeting of the International Working Group on the Salvage Convention took place in London on Friday 18th September 2009.

The meeting was presided by the Chairman of the IWG, Stuart Hetherington. Mans Jacobsson, Archie Bishop, Jorge Radovich together with her daughter Violeta (specially invited) and Diego Chami attended the meeting. Chris Davis was unable to attend as he was presenting a paper the same day at the International Congress: "Rotterdam Rules" organized by the Universidad Carlos III, in Madrid.

2. We should recall that the aim of the International Working Group (IWG) is to consider whether any changes need to be made to the 1989 Salvage Convention. Therefore, a questionnaire was prepared by the Chairman in order to collect the views of the MLAs on subjects that the International Salvage Union identified as issues that might need to be reformed.

3. Until the day of the meeting the answers of 8 MLAs had been received, namely the ones of Italy, Germany, Australia and New Zealand, Slovenia, Denmark, Mexico, and Argentina. Since then, the answers of Brazil, France, Sweden, and Japan have also been received.

4. As "Rapporteur" in order to make records of the meetings the IWG appointed Diego Chami, who also had the task of presenting a paper with MLAs' answers to each question.

5. Before considering the answers of the MLAs to the questionnaire, some general issues were discussed. It was said that some countries might consider premature amending the 1989 Salvage Convention only 13 years after it had been in force. However, it was also mentioned that the Convention was finalised twenty years ago and work commenced on it 30 years ago. Since then many changes have taken place and it could be many years before any changes CMI recommends become a reality and that the work of the IWG might not be imperative today but could be an urgent need in the near future. By then, the task will have been done. Moreover, nowadays environmental regulations are stricter and there are other threats than merely oil and there is more awareness of what environmental damage means. In addition, it is clear that article 14 of the Convention does not fit the needs to encourage environmental salvage when there is a risk of failure in earning a reward.

As an evidence of that, it was stressed that SCOPIC was invoked more times than article 14¹. It was pointed out that it would be interesting to determine the geographical areas in which those SCOPIC and article 14 cases have occurred. In summary, there was general consensus that the analysis of the amendments which the 1989 Salvage Convention might need should be carried out despite the fact that the work of the IWG may conclude, either with the draft of a Protocol, or just with proposals for the industry to include in private agreements such as LOF, among other possibilities.

6. The impact of the compensation for environmental salvage as well as its relation with general average were discussed during and after the meeting through an exchange of e-mails, discussion that has been summarized herein below.

6.1. Jorge Radovich stated that, in his opinion, a compensation for environmental salvage would increase the owner's exposure, because any case (e.g. a spill from a non-tanker vessel) or substance not covered by the CLC/Fund Conventions would not allow the environmental salvage reward paid by the ship-owner to be recoverable under those conventions.

¹ As stated in Annex 2 of the papers presented by Archie Bishop to the IWG: "...between the inception of SCOPIC on 1 August 1999 and 5 March 2009 (9½ years), there have been 871 LOF cases notified to Lloyd's. SCOPIC was invoked in 211 of those cases, approximately 24% of the total. Further, the vast majority of SCOPIC cases have been settled amicably for there have only been seven SCOPIC-related arbitrations. In contrast, between 1992 and 1998 (six years), there were 18 Article 14-related arbitrations, eight of which were appealed".

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Mr. Jacobsson expanded on the issue of the extent to which rewards for environmental salvage would be recoverable under the CLC/Fund Conventions regime. He stated that the CLC/Fund Conventions regime would not apply to ships other than those constructed or adapted for the carriage of oil as defined (i.e. persistent oil) in bulk as cargo and that those conventions do not therefore apply to non-tankers.

Furthermore, Mr. Jacobsson pointed out that the Bunkers Convention, which covers damage caused by spills of bunker oil from ships other than tankers, applies to preventive measures, but he highlighted there is no second layer of compensation under that Convention over and above the liability of the ship-owner. As regards the HNS Convention this Convention will, when it enters into force, indeed have a second layer and would apply to preventive measures (i.e. measures to prevent or minimise damage caused by substances covered by that Convention).

He stated that salvage operations would in principle fall under the CLC/Fund Conventions regime only if the damage that the operations prevent or minimise relates to pollution damage as defined in the Conventions and, unless the courts were to decide otherwise, as interpreted by the IOPC Funds' governing bodies. The definition of "pollution damage" laid down in the 1992 Conventions made it clear that damage to the environment *per se*, i.e. damage to the marine ecosystem, was not admissible for compensation under these Conventions, but only quantifiable economic losses suffered as a result of damage to the ecosystem. Consequently, salvage operations undertaken to prevent or minimise damage to marine environment as such would not be considered as preventive measures for the purpose of the 1992 CLC/Fund Conventions, unless they also prevented or minimised quantifiable economic losses such as economic losses in the fisheries and tourism industries.

Moreover, Mr. Jacobsson stressed the fact that even in cases where the salvage operations were to be considered as reasonable preventive measures in line with the 1992 Conventions, that does not mean that the amount of the salvage reward (whether or not for environmental salvage) will be recoverable under the 1992 CLC/Fund Conventions. He proceeded to state that the Fund's governing bodies have repeatedly stated that the assessment of claims for the costs of preventive measures associated with salvage is not to be made on the basis of the criteria for determining salvage awards, but the compensation is limited to costs, including a reasonable element of profit (see 1992 Fund's Claims Manual, December 2008 edition, paragraph 3.1.15; the Manual is available on the IOPC Funds' website).

This has been said even though admitting that in the end national courts will determine the interpretation of the Conventions, but experience shows -according to Mr. Jacobsson- that it is very unusual that the courts take decisions that are at variance with the interpretation of the Conventions adopted by the Funds' governing bodies.

What's more, even if the 1989 Salvage Convention were to be amended introducing environmental salvage rewards, such an amendment would not, in his view, have any impact on the interpretation of the 1992 Conventions as regards the admissibility of claims related to salvage operations.

For the sake of clarity, Mr. Bishop stated that the ISU's proposal for environmental salvage under a redrafted Article 14 of the 1989 Salvage Convention does not depend on nor is it related to the strict liability pollution conventions. He stated that there will be cases in which an environmental award will be admitted despite there being no claim on the pollution conventions (e.g. salvage in an area where none of those pollution conventions apply). Mr. Bishop continued that the suggested environmental award is for preventing or minimising damage to the environment and not for preventing liability (although this may be relevant to the amount awarded, he wrote).

Mr. Bishop also made some comments regarding the need for a limit or cap to the environmental salvage award. He stated that as the salvaged value is the cap for a salvage reward under Article 13 of 1989 Salvage Convention, a limit needed to be found for a new environmental salvage reward under a redrafted Article 14 of the same Convention. It should be recalled that regarding such cap, one of the suggestions made by ISU was that the cap should be the limits fixed by the

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pollution conventions. This was considered as a convenient way of determining the limit according to the size of the vessel and there may be additional benefits to fixing a cap this way.

According to Mr. Bishop, the side benefit to the ship-owner would be that if the ship-owner can limit his liability under the CLC then, he could legitimately state that the environmental salvage award was the result of a reasonable contract entered to prevent and/or minimize damage to the environment. Then the ship-owner should be entitled to participate in his own pollution limitation fund with other claimants (thereby reducing the share due to other claimants) and, if that claim and all other claims exceeded the limit, against the Fund Convention.

Of course, Mr. Bishop highlighted that it would have to be a reasonable contract. He added that, as any environmental award will take into account, and not exceed, the benefit conferred, (and if there is no benefit, there is no award) he believed most would find the contract reasonable.

In addition, Mr. Bishop pointed out that in the great majority of cases an environmental award wouldn't be expected to be as the limit set. The extent of the award would be dependant on the precise circumstances of the case, but in the same way as a salvage award never exceeds, or even equals, the salvaged value one would not expect an environmental award to equal the cap set.

Mr. Bishop also stated that he accepted that environmental salvage could increase the owners' exposure, bearing in mind that at present and according to Article 13.1.(b), the award granted taking into account measures in preventing or minimizing damage to the environment, is paid by ship and cargo pro rata to value. On the contrary, under the ISU proposal the environmental salvage award would be paid by the ship alone and this would have an effect on the insurers. Property i.e. the cargo, would cease to pay what they currently do under Article 13.1 (b) (measures for preventing or minimizing damage to the environment), and P&I clubs would bear the risk of the environmental salvage award. But then, Mr. Bishop insisted, both –the cargo insurer and the P & I clubs- would be paying for what they actually insure –and for the benefit they have received.

Mr. Bishop took Mr. Jacobsson's point that the pollution funds do not cover damage to ecosystems but only actual damage to the environment as accepted by the conventions. However, he stated that if there was no damage to the environment as defined by those conventions there would be no claims against the funds of those conventions.

He continued saying that if an incident gives rise to a valid claim under the pollution conventions, salvage resulting in an environmental award would have reduced the damage and claims that would otherwise have occurred.

The governing bodies of the funds cannot, to date, have considered the possibility of environmental salvage being a preventive measure, for no such claim has so far arisen, but he believes that any award specifically geared minimising or preventing damage to the environment, which would otherwise form a claim under the conventions, would be difficult to resist.

Regarding the contract mentioned by Mr. Bishop, Mr. Jacobsson answered that he still maintains that for the purpose of deciding whether an environmental salvage claim falls within the 1992 Conventions, the contract (whether reasonable or not) is irrelevant. He added that the States Parties to those conventions have very clearly and repeatedly taken the position that only the costs incurred by the salvor and a reasonable element of profit are admissible for compensation under the 1992 Conventions. As regards Mr. Bishop's statement that any award specifically geared minimising or preventing damage to the environment, which would otherwise form a claim under the conventions, would be difficult to resist, he repeated that the definition of "pollution damage" made it clear that damage to the marine environment as such was not admissible for compensation under the CLF/Fund Conventions, but only quantifiable economic losses resulting from damage to the environment.

6.2. Regarding general average, Mr. Bishop wondered if a ship could still claim general average for salvage bearing in mind Rule VI of York Antwerp rules 2004. He answered affirmatively and stated that whilst the amendments in 2004 prevented a readjustment of a salvage award made

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against ship and cargo they specifically provide that if one party pays another's contribution, he can have it taken into account in GA.

The purpose of the York Antwerp Rules 2004 was to ensure that a properly apportioned salvage award was not readjusted in general average. However, the York Antwerp Rules 2004 leave open the possibility of an adjustment if for instance the ship-owner pays the cargoes' proportion of salvage. He added that one of the proposals to solve the containership problem is to provide that the ship-owner issues security to the salvor for the cargo.

Mr. Radovich answered that according to the new Rule VI salvage is no longer allowed in general average which, in his opinion, was not convenient and partially explains the lack of adoption of the 2004 York Antwerp Rules. He added that he had already taken into account Mr. Bishop's comments on the new Rule VI of the 2004 York Antwerp Rules and that it was correct to say that by exception when one party pays others' salvage charges, these amounts should be allowable in general average, but he pointed out that the principle was still exactly as he had stated in the meeting. Furthermore, the only case that he knew in which a ship-owner could accept to respond for other parties' salvage award is in a scenario of immediate peril of loss of the vessel. He could not see how the ship-owner could be voluntarily interested in paying for the cargo's proportion of the salvage award, for instance, when he does not know the value of the goods and has no instructions of the cargo owners/underwriters to proceed in that way. He added that both aspects could lead to litigation. In his opinion, it should also be taken into account that the 2004 York Antwerp Rules are very rarely applied in practice.

7. It was also said that the Environmental Salvage, the answers received from the MLAs and the work of the IWG, can be included as a subject in the Buenos Aires Colloquium, which will take place in October 2010.

Before that, in the second quarter of 2010, a meeting of the Sub-Committee will take place in London, in order to summarize all the answers received from the MLAs and to listen to the position of the industry that will be specially invited to attend.

Then, the discussion of the MLAs answers to the questionnaire began.

Question:

1.2.1. Do you consider that the words emphasised above in the definition contained in Article 1 (d) of the Salvage Convention ("in coastal or inland waters or areas adjacent thereto") should be deleted?

The majority of the answers received, namely the ones of the MALs of Italy, Germany, Argentina, Australia & New Zealand, Slovenia, Mexico, and Denmark were in favour of amending Article 1 (d) of the Salvage Convention ("in coastal or inland waters or areas adjacent thereto"). The MLA of Slovenia and Denmark stated that the expression "in coastal or inland waters or areas adjacent thereto" was not accurate or precise enough, or simply not defined.

However, from these countries, Germany and specially Italy stressed that there should be a limit in the geographical scope of application and that it should not be extended to operations anywhere, considering that salvages in the high seas should not be covered.

Question:

1.3. Alternatively do you think words such as those used in the other Conventions which have been quoted above (e.g. "where ever such may occur"/"exclusive economic zone"/"territorial sea") should replace those words in Article 1 (d) of the Salvage Convention?

The majority of answers received were in favour of amending article 1 (d) in order to include the damage occurred not only in territorial waters but also in the Economic Exclusive Zone in accordance with the international law, or if a State has not established such a zone, in an area beyond and adjacent to the territorial sea of the State, determined by that State in accordance with

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international law and extending not more than 200 nautical miles from the base lines from which the breath of its territorial sea is measured. The MLA of Argentina was in favour of extending the scope of application to "where ever such may occur".

Question:

1.4. Have there been any reported cases in your jurisdiction in which the word "substantial" (which is contained in Article 1(d) of the Salvage Convention), as used in that definition, have been interpreted?

1.4.1. If so, could you provide a copy of the decision?

Only Australia had reported cases which were attached to their answers.

1.4.2. If there have been no such cases in your jurisdiction do you think it likely that the word "substantial" could create difficulties of interpretation?

1.4.3. If so, do you consider that there is any other word or group of words that could better identify what is intended by the definition?

As regards retaining or removing the word "substantial" the positions were divided.

The MLAs of Italy, Germany and Slovenia were of the opinion that the word "substantial" might cause interpretation problems. The Italian MLA stated that there is a difficulty in distinguishing between damage that is substantial and damage that is not substantial or the incident that is major and the one that it is not. Germany's MLA stated that the word "substantial" might well be difficult to apply and give rise to dispute as well as to determine what a major incident was. Slovenia stated that the case of the *Castor* illustrates the difficulty of such definition. Mexico also considered that the word may cause problems of interpretation. On the other hand, New Zealand considered that it could cause no interpretation problems, Australia gave no answer and Argentina went directly to the answer whether the word "substantial" would be maintained or replaced.

The MLAs of Germany, Argentina, and Mexico were of the opinion of retaining the word "substantial". Germany stated that despite the difficulties in interpreting what is substantial or not, major or not, the decision should be left to the courts and that the wording of article 1 (d) should remain as it is. Argentina stated that the word "substantial" should be maintained or replaced by another word to put clear that the damage to the environment should be considerable or of importance to trigger the Special Compensation and that a minimum damage would not be enough. Mexico stated that despite the interpretation problems, the word "substantial" should remain.

On the other hand, Italy and Slovenia were in favour of removing the word "substantial".

Italy stated that in addition to the difficulty of interpretation between substantial and non substantial and major and minor, the very basis of any of such distinctions was disputable and that the same damage might be considered substantial in one country and not in another in view of the different economies and that such distinction is not made by the CLC, HNS or the Bunker Conventions.

Slovenia was of the position of deleting the word "substantial" and also "major" and that, even if the meaning of the two words was defined, the ambiguities in their interpretation will not be solved.

Australia and New Zealand answered "Not applicable" to question 1.4.3.

1.5. Do you think that where an incident occurs that could give rise to dangers to navigation (for example a loss of containers at sea) would be covered by the definition in Article 1(d) (i.e. do you think it would be held in your jurisdiction to come within the meaning of the words "or similar major incidents")?

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The MLAs of Australia & New Zealand answered with a straight yes. Slovenia considered that the provision could only apply to cases that therefore would fall under the definition of "...similar major incidents..." in which containers were afloat and salvors attempting to remove them to prevent damage to the environment, but as specific cases should not be included in the definition.

Italy's MLA stated that they had some difficulties in understanding the question. They asked, for example, in cases of loss of containers at sea, which would the services rendered be: i) the action to prevent the loss? ii) the action of collecting the containers? They also asked what effect such action on the right to a reward would have. And if those services would justify an enhancement of the reward under the criterion set out in paragraph 1 (b) of article 13 or justify the application of article 14. They also wondered if, in case of affirmative answers, the Montreal compromise would survive. Besides, they mentioned that widening the definition of damage to the environment to events that have nothing to do with the environment would trespass into very dangerous grounds. After stating that, they added that the notion of salvage would become uncertain if dangers external to the vessel or property are taken into account. In summary, the events that could constitute a danger to navigation would not come into the meaning of "similar major incidents" because the expression is only related to incidents in which there is a prejudice to the environment and not to the navigation.

Germany's MLA answered no to the question if navigation hazards as floating containers are akin to water pollution or contamination because contamination suggests that the condition of the water itself must be affected.

Argentina stated that an event that causes dangers to navigation would not fall within the definition of article 1 (d) unless in cases in which a serious and real risk to the environment exists because the loss of containers by itself does not imply environmental damage. However, there could be such a risk if the nature of the cargo in the container or the sensitivity of the area or the dense navigation in narrow channels could lead to a threat of physical damage to human health or to marine life or resources.

Mexico did not consider that the loss of containers could fall under "similar major incidents" and Denmark did not understand the question because dangers to navigation do not fall under article 1 (d).

1.5.1. If you think there is a risk that such incidents may not be covered by the definition in Article 1(d), do you think that the definition should be widened?

1.5.2. If so, can you suggest any wording that you think might be appropriate?

Italy considered that to widen the definition would endanger the Montreal Compromise and give rise to unpredictable consequences and to a great increase in litigation. Slovenia considered that the definition should not be widened together with Argentina. Mexico did not oppose to widening the definition.

2. Article 5 in the Salvage Convention 1989 provides as follows:

"Salvage operations controlled by public authorities

1. This convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated."

Question:

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2.1. Can public authorities pursue claims for salvage in your jurisdiction?

The answers to this question were divided. At first only Italy and Argentina answered NO, whereas Germany, Australia & New Zealand, Slovenia, Mexico, and Denmark answered YES. However, Italy and Slovenia added that there was no provision under their domestic law, but Italy informed about a precedent in which an Admiral's claim was rejected and in the opposite position Slovenia mentioned that nothing *de iure* prevented public authorities from pursuing salvage claims.

From the answers of Italy and Germany, we can conclude that, if the public authorities are under a duty to provide salvage services free of charge, salvage claims are excluded.

The same construction inspires the answer of Argentina.

Germany clarified that public authorities may in principle claim a salvage reward but that it was less clear in relation to the special compensation.

Question:
2.2. If they cannot, do you think it would improve their position if Article 5 paragraph 3 was deleted or amended?

Italy considered that the provision was appropriate and that it should be left unaltered. Slovenia was of the same position and added that any further modifications towards unification will not hurt maybe by model rules. Argentina was also of the position of an appropriate amendment. Germany was against modifying article 5.3. and together with Slovenia stressed that it was a matter of domestic law.

No applicable answers: Australia & New Zealand, and Denmark.

3. Article 11 in the Salvage Convention 1989 provides as follows:
Co-Operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

3.1. Comment

The International Working Group on Places of Refuge asked questions in its first questionnaire in relation to this provision. In order to assist the IWG on the Salvage Convention we repeat the first three questions that were posed in that questionnaire as follows:

Question:
3.2. Has your country ratified the Salvage Convention 1989?

Italy, Germany, Australia, New Zealand, Slovenia, Denmark, and Mexico have ratified the 1989 Salvage Convention, but Argentina has not, even though it has been recommended to the authorities several times by their MLA.

Question:
3.2.1. If so, has it enacted any legislation or regulation to give effect to Article 11?
3.2.2. If so, please supply a copy, if possible with a translation into English or French.

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Italy, Germany, Australia, New Zealand, Slovenia, and Denmark answered no. Only Mexico enacted article 11 in their Maritime Navigation and Commerce Act.

Question:

3.2.3. Do you think this Article should be amended to refer to the IMO Guidelines on Places of Refuge (Resolution A.949(23)) Adopted in December 2003.

Italy, Australia & New Zealand, Slovenia, and Mexico were of the prevalent opinion that article 11 should not be amended. Italy mentioned that if a reference to IMO Guidelines was included, it would then be superseded if a different instrument were adopted, for example a convention.

On the other hand, a minority of countries, namely Germany and Argentina were of the position that Contracting States should observe the provisions of Resolution A.949(23). Denmark was of the idea of replacing "take into account" for more binding words from article 11.

4. Article 13 of the Salvage Convention 1989 establishes the "Criteria for Fixing the Reward". Paragraph 2 of Article 13 provides as follows:

Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defense.

4.1. Comment

In recent years the salvage of container ships, which continue to grow in size, has given rise to problems in collecting security from cargo interests. Thousands of interests are often involved and it can take months to collect security. Often it is not obtained at all. Further, even when security is provided, cargo often remains unrepresented and has to be given notice of a pending arbitration, an award, and an appeal of an award, causing considerable expense and delay. It has been suggested that the problem could be solved if, in container ship cases, ship owners were responsible for the provision of cargo security.

Question:

4.2. Has your jurisdiction made any provision, as provided for in Article 13 paragraph 2 for the payment of a reward by one of the interests referred to in the opening sentence of this paragraph?

In Germany, Argentina, and Slovenia the salvage reward shall fall on the salvaged interest. Australia, New Zealand, and Denmark informed that there was no such provision stating that a reward should be paid by one of the property interests. Italy informed that even though there was no such provision, their jurisprudence was generally of the view, under the 1910 Salvage Convention, that the owner of the salvaged vessel is bound to pay the whole of the salvage reward, and has a recourse action against the owners of the cargo. The IWG will find out which were the solutions in Dutch and Belgian law.

Question:

4.3. Do you think it would be appropriate to specify in this Article that in containership cases the vessel only is responsible for the payment of claims (and therefore would be responsible for the provision of security) subject to a right of recourse against the other interests for their respective shares?

A majority of MLAs answered no, namely Germany, Argentina, and Denmark. Australia & New Zealand answered yes. Italy, Slovenia, and Denmark were of the opinion that if the rule were to

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be amended, it should include all cargo ships, not only container vessels. The majority were of the opinion that the salvor had the remedies to enforce his claim, namely a lien on the property.

1. 5. Article 14 in the Salvage Convention 1989 provides as follows:

"Special Compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.
3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).
4. The total special compensation under this article shall be paid only if and to the extent that such compensation is granted than any reward recoverable by the salvor under article 13.
5. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel."

Comment

5.1. Over time this provision proved to be cumbersome, expensive to operate and uncertain in outcome. It also became counter-productive and discouraged rather than encouraged the salvage industry. As a result industry devised SCOPIC to replace article 14 contractually. SCOPIC has been successful and has substantially cut down the amount of litigation following a salvage operation. It is, however, only relevant in about 20% of modern cases and is still only a safety net.

Question:

5.2. Do you consider that consideration should be given to amending article 14 in order to create an entitlement to an environmental award? (It is recognised that there are "political" issues involved as to who would pay for such an award but the IWG would be interested to know whether your MLA would be in favour of an investigation of this issue. It is also recognised that if you answer this question in the affirmative, consequential changes may need to be made to the definition of "damage to the environment" in article 1(d), to article 13, article 15 and article 20).

A majority of the opinions received were in favour of an amendment of article 14. Of this view were Australia & New Zealand, Germany, Argentina, and Slovenia. Australia & New Zealand

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considered that views needed to be widely canvassed and carefully balanced. Germany pointed out that the SCOPIC clause demonstrates that article 14 is not accepted by the industry and therefore they supported a reconsideration of the issue by the IWG, but the issue should be previously negotiated by the industry. Argentina stressed that the defining question was to determine who should pay the bill.

On the other hand, Italy was concerned about a possible radical change of article 14 that might give rise to a great many problems and conspire against uniformity and was in favour of a simplified wording of article 14 rather than a radical change that would disrupt the Montreal compromise on articles 13 and 14 of the Salvage Convention by which the ship-owner and its P&I Club would have to pay a much greater compensation. Denmark strongly opposed to including an environmental salvage that would create a high degree of uncertainty which would be a strong breach of the Montreal compromise.

6. Comment

6.1. Prior to the Convention life salvage claims would have been made direct against the owners of the property, but as a result of the Convention it would appear that such claims now have to be made against the salvor. This could create problems for the property salvor if it was not involved in the life salvage, which is often the case. The salvage claim which the salvor makes under Article 13 and any claim for special compensation under Article 14 would under normal circumstances be restricted to the work that has been carried out and the expense incurred and not include any effort by some third party over which the salvor had no control.

Question:

6.2. Do you consider that the wording of this Article should be amended to ensure that any life salvage claims against property are made directly against a property owner rather than the salvor?

The opinions were divided. Argentina, Australia & New Zealand, Germany, and Mexico favoured the amendment. Germany pointed out that anyway the claim would still be only for a share of the award or special compensation the property salvor is entitled to.

The other position was shared by Italy, Slovenia, and Denmark. Italy stressed that the provision was sound and has an important moral justification.

7. Article 20 of the Salvage Convention 1989 provides as follows:

"Maritime lien

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.

2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided."

Question:

7.1. If you are of the opinion that the suggestions made for reform of article 14 should be considered, do you also agree that article 20 should be amended to create a statutory lien against the ship for such a claim?

The affirmative position was shared by Argentina, Australia & New Zealand (where there is such a lien). Germany stated that both the environmental award as the regular award should have a lien on the property.

The other position was expressed by Italy, Slovenia, and Mexico, countries which opposed to the environmental award.

8. Article 27 of the Salvage Convention 1989 provides as follows:

"Publication of arbitral awards. States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases."

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8.1. Comment

The ISU is in favour of the publication of awards. The Lloyds Salvage Group has recently agreed to amend the LSSA clauses so that awards are published as a matter of course, unless any party to the arbitration objects. There is clearly a conflict between the expectation that arbitrations will be conducted in private.

Question:

8.2. Do you consider that article 27 should be amended to reflect the position achieved by the Lloyds Salvage Group?

Argentina, Germany, Australia & New Zealand, Mexico, and Denmark were in favour of publishing the awards. Italy opposed and considered the change unnecessary. Slovenia shared that position.

9. General – Question:

9.1. Are there any other issues or problems that you are aware of in relation to the Salvage Convention 1989 which the IWG should consider for possible amendment?

Italy considered it too early for a possible review of the 1989 Salvage Convention and that the Convention should be tested for a longer time before deciding whether any changes might be convenient. However, they focused on articles 14 and 21 as candidates for amendments.

Another provision that ought to be the subject of consideration by the CMI is article 21. Pursuant to paragraph (1) the owner of each property salvaged is bound to provide security for the share of the reward due by it. As regards article 21.2., Italy's MLA stated that one way of protecting the salvor would be to provide that the owner of the vessel has the obligation not to deliver the cargo or that the cargo be delivered only if satisfactory security is provided, otherwise he would be bound to pay the entire salvage reward.

Germany suggested the following points to be included:

- To reconsider the definitions of "Ship" and "Property" in Article 1 (b) and (c) of the Salvage Convention in view of the definition of "Wreck" in Article 1 No. 4 of the Wreck Removal Convention, taking into account that whether there is still a ship or already a wreck may have effects on the applicability of either Convention and thus on the "salvor's" position.
- To include a definition of the vessel owner who may be liable for a salvage reward or special compensation, taking into account that in many jurisdictions as well as the registered owner in many respects is replaced by the owner *pro hac vice* ("Ausrüster"), i.e. the operator of the vessel, often a bareboat charterer.
- To state that the salvor's misconduct (Article 18 of the Salvage Convention) should not affect the claim of the third party salvor of human life for a share of the salvage award as per Article 16 (2).

Australia and New Zealand suggested that the potential liability to third parties should be specifically excluded as a factor to be taken into account within the context of Article 13.

Question:

9.2. How many salvage cases have been decided in your jurisdiction under the 1989 Salvage Convention?

Italy mentioned that the success of the 1989 Convention is also proved by a significant reduction in litigation and that since July 1996 only four cases have been reported. Mexico reported six cases decided under the Convention. Germany informed that there were no reported German cases, Australia only very few (fewer than 10), New Zealand and Slovenia none.

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Question 1.2 or 1.3	Article 1(d) Delete "In coastal or inland waters or areas adjacent thereto"? Replace with "Wherever such may occur/eez/territorial sea"?
Argentina:	Favours replacement "wherever such may occur".
Australia & New Zealand:	Favours deletion but no additional words necessary.
Belgium:	Supports existing wording.
Brazil:	Favours replacement with: "in territorial waters and in the exclusive economic zone of any State".
Canada:	Support existing wording, but recognises that consistency with other conventions may be desirable; but only in the context of the Salvage Convention as a whole.
China:	Favours deletion and extension to EEZ, but not high seas.
Denmark:	Favours replacement with "EEZ or an area adjacent to the territorial sea equivalent to an exclusive economic zone".
France:	Favours amendment: "Damage to the environment means...in territorial waters and in the exclusive economic zone of any State, established in accordance with international law, or, if a Contracting State has not or, if a State Party has not established such a Zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the base lines from which the breadth of the territorial sea is measured".
Germany:	Not deletion, rather amendment, so as to refer to "Coastal waters including Territorial Sea and EEZ... or up to 200 nautical miles", some restriction on geographical scope is needed. (It should not be necessary that EEZ belongs to a State party to the Convention).
Hellenic	Favours amendment to include "wherever such may occur/EEZ" etc.
Italy:	Favours amendment (same wording as France).
Japan:	Do not consider words should be changed but would be prepared to consider any better wording.
Malta:	Favours extension to all areas of the sea, ie "wherever such may occur" should replace "In coastal or inland waters or areas adjacent thereto."
Mexico:	Favours replacement and additional words, such as "in territorial waters and in the EEZ of any State as established in accordance with International law".
Netherlands	No, but favours reference to EEZ
Norway:	Agrees that the wording is too restrictive. It has extended the scope by its implementation legislation. It also queries why it is limited to marine life and resources. It favours "wherever such may occur" rather than references to EEZ etc.
Slovenia:	Favours replacement and additional words, (Territorial Sea, EEZ etc).
Sweden:	Does not favour deletion but the notion of the High Seas should apply to the EEZ.
UK:	These are matters of policy. In most cases ships will be brought within territorial waters.

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Question 1.4	Reported cases where the word "substantial" interpreted (as in "substantial damage") - Article 1(d)?
Argentina:	No, but favours retention (or even clearer language).
Australia & New Zealand:	Yes, (None in New Zealand - the word "substantial" does not cause difficulties).
Belgium:	No. The word "substantial" is unlikely to cause difficulties.
Brazil:	No, "substantial" would create difficulties of interpretation - suggest deletion of "substantial" and "major".
Canada:	No cases but would be interpreted by court or arbitrator
China:	No cases, and favours deletion of the word "substantial" in view of likely inconsistent interpretations.
Denmark:	None.
Germany:	None, "substantial" could cause difficulties, similarly "major", but this should be left to the courts to determine.
Hellenic	None. Supports deletion of "substantial" and inclusion of "such damage does not include minor cases".
Italy:	None, and supports deletion of words "substantial" and "major".
Japan:	None, and do not consider the words cause difficulties of interpretation.
France:	None [1.4.2. "Substantial" translated as "important" - large discretion].
Malta:	None. (Malta is not a party to the Convention)
Mexico:	None. Whilst recognising problems with "substantial" suggests it remain.
Netherlands:	No. Courts need to interpret.
Norway:	None. Norwegian Courts are well able to interpret.
Slovenia:	None. "Substantial" can cause difficulties and supports deletion of "substantial" and "major".
Sweden:	None. "Substantial" creates difficulties and supports deletion of "substantial" and "major".
UK:	Not in salvage cases but in LOF awards (see Schedule 1; <i>R v Monopolies and Mergers Commission ex parte South Yorkshire Transport Limited</i> (1993) 1 WLR.23).

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Question 1.5	Article 1(d) - Would the words "Dangers to navigation" (such as containers lost at sea) be covered by "or similar major incidents" in your jurisdiction?
Argentina:	Were it a party to Convention it would not be covered, unless contents of containers, sensitivity of area etc made it so.
Australia & New Zealand:	Yes it would be covered.
Belgium:	The question confuses two issues.
Brazil:	No, unless it causes risk to the environment would not be in favour of expanding definition.
Canada:	No
China:	No, it would not be covered, and do not consider definition needs to be amended.
Denmark:	No.
France:	It is not clear that all incidents would give rise to damages to navigation - have to be a "major incident". Does not consider amendment necessary.
Germany:	Not covered.
Hellenic	Not covered and definition should be widened.
Italy:	Not covered, and do not support widening the notion of "similar major incidents", and would endanger survival of the Montreal Compromise.
Japan:	It would depend on the nature of the incident, and would not support widening.
Malta:	Were Malta a party to the Convention, it is likely that a restrictive interpretation would be given and such a scenario would not be covered, and therefore supports amendment to refer to such an occurrence.
Mexico:	Yes it would be covered, but would not oppose widening the definition.
Netherlands:	Does not consider covered but does not support widening definition.
Norway:	Believes it would be interpreted by a Norwegian Court as being covered.
Slovenia:	Yes it is possible it would be covered, but the definition should not be widened.
Sweden:	Not necessarily - it would depend on the contents of the container. Would not support widening of the definition.
UK:	It is unlikely that an incident that could give rise to dangers to navigation, such as loss of containers at sea, in the absence of other dangers, would be covered by definition of "substantial".

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Question 2.1 and 2.2	Article 5 - Can Public Authorities pursue claims for salvage in your jurisdiction? If they cannot would it improve their position if Article 5 paragraph 3 were deleted or amended?
Argentina:	Naval and Coast Guard vessels cannot seek a reward but can recover expenses. Public vessels can seek reward.
Australia and New Zealand:	Yes.
Belgium:	Yes.
Brazil:	Although there is no provision which prevents such claims in practice Brazilian navy, for example, only seeks to recover costs. This provision should remain unchanged.
Canada:	Yes
China:	Yes, although it is unclear whether this right continues where salvage is performed under the control of the relevant competent authority. Favours Article 5 paragraph 3 being deleted so as to distinguish between possible authorities who "perform" salvage from those who "control" salvage, perhaps allowing States to reserve their position on deletion.
Denmark:	Yes.
France:	Yes, however there is an obligation on the State to maintain public properties on the coastline in good condition.
Germany:	Yes, in principle but there are conflicting views and less clear in relation to special compensation.
Hellenic	No, but public authorities are entitled to expenses and damages.
Italy:	Nothing to prevent but not done by Navy and not in favour of changing the provision.
Japan:	No. There is no domestic law permitting such claims. The present article should remain the same.
Malta:	Public authorities can bring claims for salvage.
Mexico:	Yes.
Netherlands:	Yes, unless fire fighting or precluded by competition law which might preclude public authority competing with private companies and offering services for free. No need to amend.
Norway:	In principle public authorities can claim for salvage where performing services beyond their "obligations".
Slovenia:	Yes, but not the military. The provision should not be amended, although Model Rules to assist in achieving uniformity may be of benefit.
Sweden:	Yes, Article 5 paragraph 3. Provision should remain.
UK:	If performing a public duty; no; but if doing more than that may be able to claim. Do not consider their position would be improved by

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Question 3.2, 3.2.1 and 3.2.3	Article 11 - Has the Salvage Convention been ratified by your jurisdiction? Has "Article 11 been given effect to? Should the IMO Guidelines be incorporated?
	Argentina: No No Yes
	Australia & New Zealand: Yes No No
	Belgium: Yes There is a Belgian Act dd 20.01.1999 for the Protection of the Marine Environment. The IMO Guidelines will be integrated into domestic legislation in the EU by reason of the Dir 2009/17/EC so there will be no need to include in Salvage Convention.
	Brazil: Recently accepted but not ratified No No.
	Canada: Yes; only by its inclusion in the Convention; there may be merit in incorporating the IMO Guidelines.
	China: Yes No No, because Salvage Convention is essentially dealing with private law matters.
	Denmark: Yes No No, but strengthen by replacing "take into account" with more binding words.
	France: Yes No No, because article is in general terms and reference to IMO Guidelines would be too restrictive.
	Germany: Yes No Yes, because EEZ directive refers to IMO Resolution A.949(23) and EEZ States are required to bring the legislation into force. It would lead to greater uniformity if Convention also requires States to observe IMO Resolution.
	Hellenic: Yes No
	Italy: Yes No No, do not consider it necessary or advisable.
	Japan: No N/A No - Guidelines mainly deal with public law and do not fit with the nature of the Convention.

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Malta:	No No ?
Mexico:	Yes Yes with reference to other, unnamed International Conventions No
Netherlands:	Yes No No
Norway:	Yes. Not specifically responsive to Salvage Convention.
Slovenia:	Yes No It is not necessary but it might improve salvage practice.
Sweden:	Yes No No. Better dealt with in Convention specifically dealing with these issues.
UK:	Yes. Not specifically responsive to Article 11, but indirectly eg. Erika 2 Directive - Article 20; Erika 3 Directive; UK National Contingency Plan. Reservations about incorporating IMO Guidelines. Incorporation of the IMO Guidelines could erode the flexibility which they are intended to have.

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Question 4.2 / 4.3	Article 13 paragraph 2 - Has your jurisdiction provided for payment of reward by one of the interests? Containership cases: Should the Convention identify only the vessel as responsible?
	<p>Argentina: No No.</p> <p>Australia & New Zealand: No Yes.</p> <p>Belgium: No No. It would create practical difficulties.</p> <p>Brazil: No No - do not consider it appropriate.</p> <p>Canada: No No.</p> <p>China: No Further work needs to be done to explore solutions in relation to provision of security and handling of unrepresented cargo, both in relation to container and general cargo ships.</p> <p>Denmark: No No, opposed to any special rule for containerships.</p> <p>France: No No, there is no apparent reason to make specific provision for containerships.</p> <p>Germany: No No, it is salvor's responsibility and can enforce its lien. .</p> <p>Hellenic: No, although the prevailing opinion is that it is permissible to submit a claim against the ship owner for the fee which relates to the cargo. Yes.</p> <p>Italy: No, any change to deal with containerships would have to be for all vessels.</p> <p>Japan: No No.</p> <p>Malta: No Whilst it may be beneficial doubts whether owners and their insurers would find it acceptable.</p> <p>Mexico: No No, strongly opposes any such provision.</p> <p>Netherlands: Yes. Liability is channelled to shipowner. Favours amendment re container ship cases but queries why limit to such ships.</p> <p>Norway: No No, it can be dealt with by way of local legislation.</p> <p>Slovenia: No No, unless do for all ships.</p>
JRW/ST/NEE	<p>Sweden: No No distinction should be made for container vessel.</p> <p>UK: No. There are differing views as to whether this is a problem but it is under discussion by the Lloyds Salvage Group.</p>

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Question 5.2	Article 14 - Environmental Salvage award?
Argentina:	Yes.
Australia & New Zealand:	It is worth considering.
Belgium:	No.
Brazil:	No.
Canada:	Recognises that Article 14 has not worked but needs to be convinced that it is necessary to amend Article 14.
China:	Yes. The existence of SCOPIC establishes the deficiency in the Convention. Such award should be paid for in proportion to the salvaged values of ship and other property.
Denmark:	No (strongly opposed) because it was firmly rejected from the Convention. Any change would lead to uncertainty and would constitute a breach of the Montreal Compromise.
France:	No, there seems no reason to create an environmental reward beyond what is already covered by Articles 13 and 14.
Germany:	Yes, the existence of SCOPIC demonstrates that Article 14 has not been accepted by industry and needs to be reconsidered. Any amendment needs to be negotiated by Clubs, property underwriters and ISU. Industry support needed.
Hellenic	Yes.
Italy:	No, but could simplify the wording of Article 14 without being so radical. The introduction of an environmental reward would disrupt the Montreal Compromise.
Japan:	No, it would damage the fundamental structure of the Convention.
Malta:	Yes.
Mexico:	No.
Netherlands:	No, but welcomes an investigation to amend Article 14 along the lines of the SCOPIC Agreement.
Norway:	No. However alternative response recognises that there are different views and agrees that it is time to revisit liability salvage/environmental award. Believes Article 14 could be amended to provide greater encouragement to professional salvors to maintain vessels and equipment dedicated to prevent environmental damage.
Slovenia:	No. Concerned that amendment would cause dissatisfaction to owners and Clubs but salvors concerns need to be addressed.
Sweden:	An investigation would need to be initiated
UK:	No Consensus reached on this issue.

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Question 7	Article 20 - If yes to 5.2 do you agree that Article 20 should be amended to create a statutory lien against the ship for such a claim?
Argentina:	Yes.
Australia & New Zealand:	No (already a maritime lien).
Belgium:	No.
Brazil:	No.
Canada:	Doubts whether Canadian Government would support creation of new statutory lien.
China:	Yes, against the ship and other property.
Denmark:	N/A
France:	No.
Germany:	Yes. Under German law salvor has lien, Article 20 should provide statutory liens for all salvage claims including any environmental award.
Hellenic	Yes.
Italy:	No.
Japan:	N/A
Malta:	This would not be necessary in Malta (which is not a party to the Salvage Convention. Its legislation is already sufficiently wide). It queries, however, whether it would be appropriate to create such a lien in circumstances in which the Convention does not grant a lien in any other situations.
Mexico:	No.
Netherlands:	No. Such issues should be left to the Mortgages and Liens Convention.
Norway:	No. Maritime laws should only be created by the Convention on Maritime Liens and Mortgages and national law.
Slovenia:	No.
Sweden:	No, but an investigation of the environmental salvage issue may lead to a different outcome.
UK:	It is an open question as to whether this is necessary.

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Question 6.2	Article 16 - Should life salvage claims be made against a property owner rather than a salvor?
	Argentina: Yes.
	Australia & New Zealand: Yes. (NZ - domestic legislation already covers this).
	Belgium: No.
	Brazil: No. This provision should not be altered.
	Canada: Consideration should be given to revision to ensure that life salvage claims made against the vessel or property owner.
	China: Claims for life salvage should be treated separately from property. Suggests the promotion of establishment of a "fund for life-saving".
	Denmark: No, opposed to any change, as do not support giving life salvors a right of their own.
	France: No opinion.
	Germany: Yes. Life salvor should be required to pursue claims against property owner. Under German law where life salvor's claim is reduced by property salvor's misconduct he/she can proceed directly against property owners.
	Hellenic: Yes.
	Italy: No. (It is not sure that claims on life salvage under 1910 Convention should be made against owners of the property salvaged).
	Japan: No amendment necessary.
	Malta: Yes.
	Mexico: Yes, favours amendment to ensure that life salvage claim be made against property.
	Netherlands: Yes. That is what is provided for in Dutch Civil Code.
	Norway: No change necessary.
	Slovenia: No.
	Sweden: No change necessary.
	UK: Do not consider that this has proved to be a problem.

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Question 8	Article 27 - Amend so that awards are published as a matter of course, but not when a party objects?
Argentina:	Yes.
Australia & New Zealand:	Yes.
Belgium:	No.
Brazil:	No.
Canada:	No.
China:	No.
Denmark:	Support publication provided parties agree but believe national law/parties should determine, not the convention.
France:	A compromise solution may be to publish a summary of the award without names of parties, as in <i>Chambre Arbitrale Maritime de Paris</i> .
Germany:	Yes, strongly in favour that all awards be published (after making them anonymous) and subject to a party's objection.
Hellenic	No. However Arbitration Tribunals must have the authority to publish awards when they may be of interest to others.
Italy:	No.
Japan:	Not necessary to amend.
Malta:	Yes.
Mexico:	Yes.
Netherlands:	No.
Norway:	No.
Slovenia:	No.
Sweden:	No, should be a matter for the parties.
UK:	This issue is under discussion.

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Question 9.1 / 9.2	Any other issues or problems? Have there been any Salvage cases in your jurisdiction under the 1989 Convention?
Argentina:	No.
Australia & New Zealand:	Suggests that potential liability to third parties be expressly excluded in Article 13 as a factor to take into account. Less than 10 cases (Australia); None (NZ).
Belgium:	No. None.
Brazil:	No None.
Canada:	No None.
China:	No Data being collected.
Denmark:	No Under investigation.
France:	Not responded to.
Germany:	Yes - the definitions of "ship" and "property" in Articles 1(b) and (c) in light of definition of wreck in Wreck Removal Convention; "owner" as it is unclear whether this applies to operator or bareboat charterer, and Article 18 - third party claim. The salvor's misconduct (Article 18) should not affect the claim of the third party salvor of human life (Article 16(2)). None reported.
Hellenic	No It is not possible to determine the number of cases. Such as they are is limited and involve minor cases. Significant cases go to London.
Italy:	Too early for review but Articles 14 and 21 need to be debated and considered. In relation to the latter consideration could be given to provide that the owner has the obligation not to deliver the cargo until satisfactory security provided otherwise the owner liable for the entire reward (ie problem if vessel bareboat chartered). 4 cases.
Japan:	No None.
Malta:	No None.
Mexico:	No 6 Cases.
Netherlands:	No. At least 7.
Norway:	No 4 cases.
Slovenia:	No None.
Sweden:	No. It considers it to be too early to consider amendments to the Convention. None.
UK:	No. Since 1990, 675 awards and 282 appeals.

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Article 13

Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- (a) the salvaged value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this Article shall prevent any right of defence.

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

Article 14

Special compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with this Article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

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2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1, may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in Article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in Article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under Article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

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United Salvage Pty Limited v Louis Dreyfus Armateurs S.N.C. (2006) 263 FCR 151

*42. The submission raises an important question as to the basis and extent to which the court can have regard to questions of the vessel's exposure to liability claims by third parties for losses arising from the incident giving rise to the salvage operation, as well as the operation itself. In other words, in determining the salvage amount, should the court treat as a relevant consideration whether any potential liability of the vessel or its owners may have been avoided by the actions of the salvors.

43. In these proceedings, the determination of this question had an effect in relation to the admissibility of evidence as well as to the determination of the quantum of an appropriate salvage reward. The issue of "liability salvage" was first raised by way of an objection by the defendants to certain evidence. After hearing detailed argument on the evidentiary point, I decided to allow evidence in relation to this question and to give my conclusions and reasons for my views in this judgment. I considered that it was inappropriate to finally resolve as a question of evidence this important question as to whether liability to which the salvaged vessel might be exposed is a matter that the court is required to take into account.

44. The defendants submit that under the 1989 Convention, the court cannot pay any regard to the consideration that the salvage operations may have had the effect of prevention or reducing the exposure of the vessel to liability to third parties for damage or economic loss. The defendants refer to the language used in Article 13, the *Travaux Préparatoires of 1989 Convention on Salvage* ("The *Travaux*"), the previous *Convention for the Unification of Certain Rules at Law Relating to Assistance and Salvage at Sea* (1910) ("The 1910 Brussels Convention"), and the fact that the decided cases relied on by the plaintiffs are distinguishable and preceded the 1989 Convention. They conclude that in light of these considerations, liability salvage cannot be considered either in the exercise of discretion or under any specific factor in Article 13(1) in the fixing of a salvage reward.

50. Experienced text writers differ in their approach as to whether any regard to liability salvage is totally excluded from consideration when fixing salvage reward under the 1989 Convention. In their *Shipping and the Environment* (1998), La Rue and Anderson categorically assert at 583 that liability salvage, in the context of operations which prevent the escape of pollutants, is not a factor recognised by Article 13. Brice in his *Maritime Law of Salvage* (1999, 3rd edn) considers at [6-79] - [6-85] that the concept of liability salvage should be considered as a distinct new form of salvage which is not yet part of the law of salvage. He notes that there are enormous practical difficulties in the path of its introduction as a separate consideration. Kennedy and Rose in *The Law of Salvage* (2002, 6th edn) conclude at 150-170 that under the 1989 Convention, liability salvage lies

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outside of the range of independent subjects of salvage reward. They observe that while averting or minimizing the risk of a vessel's liability to third parties has not in itself been recognised as a subject for consideration in fixing salvage reward, it is noted that the concept had been treated by some decided authorities as a valid factor in assessing the reward. They refer to five cases including *"The Whippingham"* (1934) 48 L.L.Rep 49. These cases were decided prior to the Convention and are of little assistance.

51. The Plaintiffs placed emphasis on the decision of Lynch J, a District Judge of the US Ninth Circuit, in *Westar Marine Services v Heerema Marine Contractors, S.A.* (1985) 621 F Supp. 1135. That case was decided before the 1989 Convention but having regard to the extrinsic material surrounding its drafting. After considering the relevant decisions in the United Kingdom, his Honour concluded that the Court could not consider the prevention of liability to third parties, the public interest, or benefits to the shipowner as distinct and independent factors in arriving at a salvage reward. It is important to note that his Honour's decision was limited to a finding that such matters could not be considered independently. In the final paragraph of the reasons, his Honour noted that the Court was still left with considerable discretion as to how the specified factors should be weighed so that a fair salvage amount that best serves the interest of the parties and the public can be awarded. Ultimately, the proposition that the Court, in exercising its discretion to take account of the need for encouragement of salvage operations is not entitled to look at the question of possible liability to third parties, even in a general way, does **not** find support in this case.

A General Approach

52. Taking into account the language of the Convention, the *Travaux* and the Nielsen Report as well as the decided authorities, I consider that the preferable view and approach to be taken in the present case in relation to the question of whether liability salvage can be considered is that expressed by Brice at [6-21] to [6-24]:

*Even if the prospect of damage to the property of third parties is **not expressly** included in the Convention, **national laws may, it seems, be permitted to include without there being breach of an international obligation ... the removal by the salvor of the threat** of claims against the owner of the salvaged property can properly be regarded **albeit very generally** as one of the elements showing the merit of the salvor's services and to that extent an enhancing feature.*

It is inappropriate in a salvage action to investigate in detail who would have been liable in damages to third parties and for how much.....

*evidence and findings directed to answering these question are beyond the scope of a salvage action. **Save in the most straightforward case** where the existence of liability on the owner of salvaged property is self evident, all the Tribunal can say*

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is that but for the success of the salvage services claims against the owner by third party owners of damaged property would have been made and would have had to have been investigated and defended.” (Emphasis added)

53. In consideration of this issue, there are no bright lines, controlling considerations or set formulas in fixing an appropriate award for salvage services. As outlined above, a global figure must be determined having regard to the factors in Article 13. The weight to be assigned to each factor is dependent on the circumstances. In one sense, the higher the monetary reward given, the greater is the incentive to undertake salvage operations. The fact that the Court should apply a liberal and generous assessment to fixing the reward with this aim in mind does not entitle the Court to award an unreasonable or extravagant amount.

54. In considering the interpretation of Article 13, I set out below my reasons for concluding that on a fair reading, none of the individual paragraphs calls for an investigation of the nature and extent of any possible third party liability which the property salvaged or the owners of the vessel might attract as a consequence of the circumstances leading to the salvage operation. In my view, a correct construction of each of the paragraphs does not import any obligation on the Court to investigate the extent to which third party liability has been avoided by the vessel as a consequence of the incident. Nevertheless, the question arises as to whether any consideration of potential liability is **excluded** by the Convention.

55. In an analysis of this issue, the starting point is that the Convention does not specifically in its terms exclude the consideration of such liability. Moreover, I do not consider that the extrinsic aids to construction prevent the Court, if it sees fit, from having regard to this consideration. In an appropriate case, this consideration may support, in a very general way, an enhancement of the reward without the Court investigating in any degree of detail the fact that the salvors' efforts may have resulted in limiting or eliminating prospective exposure on behalf of the vessel. This is not a consideration that should be scrutinized or examined with a view to reaching any specific conclusion. Rather, it should be recognized as one circumstance in the context of the salvage operation. In the light of the fact that the specific enumerated factors listed in Article 13 have been the subject of numerous international debates and agendas, and are discussed in negotiations, proposals, counter-proposals and published opinions over many years, I consider that the paragraphs cannot be read to recognise the concept of third party liability as a specific factor.

56. In my view, the Court should approach the question in the following way. The Court should consider that the factor of potential exposure to third party liability operates generally to inform the fixation of the global figure, which results from the evaluation of the criteria listed in Article 13 that may be relevant in the particular case. It would not be

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appropriate to investigate, admit and consider detailed evidence as to the nature and extent of such liability.

57. Having considered the authorities, the *Travaux*, the 1989 Convention history and the detailed submissions made by the parties, I conclude that consideration of the vessel's exposure to liability is not excluded by the Convention. It may be appropriate in particular circumstances to take into account the consideration that some liability on the part of the vessel may have been avoided by the intervention of the salvors and, in appropriate circumstances, this may inform a fixing of the reward as an enhancement without any determination, detailed investigation, consideration of detailed evidence or attempt to form any definitive conclusion as to the amount of any such liability. The possible existence of such liability can be relevant but it does not warrant consideration as an independent factor. In some circumstances, it may not be of any significant weight.

58. It may be said that such an approach introduces an additional element of unpredictability in fixing a reward, but it must be kept in mind that the whole exercise is not one of arithmetic precision. It is an exercise of evaluation, judgment, and the balancing of broad considerations. In this particular case, having regard to the circumstances to which I refer below, the prospective exposure to liability of the vessel is a matter to which I have given little weight as a general enhancing factor in fixing the reward. I now turn to consider the specific considerations."

Tamberlin J then considered each of the criteria set out in Article 13 and it is also instructive to reproduce some of the comments which he made. In relation to Article 13(1)(b) he said as follows:

"74. Article 13(1)(b) is premised on the finding that there was a real risk of substantial physical damage which has been avoided **by the skill and efforts** of the salvors. This risk must be a risk arising from the circumstances in which the vessel was placed as a consequence of the grounding and the consequent movements of the vessel. In the present case, the possible risks that may have arisen had the tugs not provided assistance include the release of oil, damage to or blockage of the channel, damage to adjoining structures or resources or livestock, or even, in the worst-case scenario, the break-up of the vessel. The possible pollutants or sources of contamination include the oil and dirty ballast water that may have escaped from the damaged ship and, in the event of the break-up of the vessel, pieces of wreckage that would be scattered in the area surrounding the vessel.

75. This provision is not concerned with remote, possible or hypothetical damage to those specified aspects of the environment, but with the prevention of **substantial physical damage**. The paragraph uses the expression "in minimising or preventing" which points to the implementation of some process and the existence of an actual risk or danger. This stands in contrast with the term "threatened" damage as used in the context

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of Article 14(1). In Article 13(1)(b), the language does not refer to skill and efforts which "aim" to minimise or prevent damage, but to those used in **the process** of preventing or minimising damage to the environment.

76. Importantly, the provision is not concerned with economic loss which the vessel may incur by way of liability for environmental damage. Rather, it is directed to the skill and efforts of the salvors in preventing or minimising any potential damage caused by major incidents. The collocation of adjectives listed in this paragraph to describe the type of incident clearly contemplates a significant event. In my view, it is not open on any reasonable reading of this provision to open up, or give weight to, considerations relating to the extent to which the efforts of the salvors avoided any potential liability of the vessel to third parties. The provision is directed to substantial **physical** damage, and is focused on the level of skill in combination with the amount of work, and difficulty of that work, which is required to prevent physical damage to the vessel and the surrounding environment.

77. In considering this paragraph, the Court must assess whether there was some realistic prospect of significant or substantial physical damage to the environment caused by the incident that is the subject of the proceedings. In considering the events of 27 March 2002, I find that there was no major incident which seriously affected or posed a direct threat to the environment. Nor was there any notable escape of pollutants or contamination into the surrounding areas which required containment or prevention measures to be implemented. The grounding of the "La Pampa" and the consequential salvage operations could be described as incidents, but I do not consider they could be characterised as major incidents which affected or threatened the environment in the manner required by this paragraph.

78. At the time of the incident, the "La Pampa" was carrying 2993 tonnes of heavy fuel oil and 163 tonnes of diesel oil, as well as lubricating oil and engine wastes containing oil and ballast water. Having regard to the position in which the oil was stored, I find that there was merely a remote possibility of a failure such as would lead to the release of any of that oil. Furthermore, the arrangement plans and the tank plans for the "La Pampa" indicate that the fuel tanks were at the rear of the vessel, well away from areas where there was any real prospect of rupture or failure which could lead to the escape of contaminants that might pollute the environment.

79. I have come to the conclusion that there existed only a remote possibility of the escape of any contaminants or pollutants. Although I consider that the salvors have exercised considerable skill and effort in salvaging the endangered property as specified under this paragraph, I do not consider that there was any imminent, present or substantial threat to the environment prevented by their skill and efforts.

ANNEX 5

80. In my view, there was virtually no real - as opposed to remote - possibility that oil or ballast water in any significant quantity could escape as a result of the grounding, and therefore I have not assigned any significant weight to this consideration. Nor do I consider that there was any real risk of breakage of the vessel so that the environment would be adversely affected.

81. In light of the evidence, I am not persuaded that there was any danger of substantial physical damage or injury to human health, marine life or resources due to the escape of oil or other pollutants, or the blockage of the channel. Nor was there any danger of substantial damage to marine resources caused by any major incident similar to fire, pollution or contamination. The plaintiffs have not established that there was any proximate prospect of such a consequence as opposed to pointing to the existence of a remote possibility. I also note that the time frame during which the salvage efforts were made was of relatively short duration. Therefore I have given some, but not great, weight to this consideration in forming my conclusion as to the proper quantum of the reward."

In considering Article 13(1)(c) Tamberlin J said as follows:

"82. Article 13(1)(c) requires that the reward is fixed taking into account the "measure of success obtained by the salvor". In this phrase, the term "success" refers to the salvaging of the property and ship in danger. The expression "success obtained by the salvor" should not be construed to mean success in avoiding the danger of the vessel or its owners or crew being sued for economic loss by third parties. The salvage operation, as Article 1 indicates, is the operation of salvaging "a vessel or property" in danger. It is directed to physical loss or damage. It is not directed to protecting the vessel from potential third party litigation claims for loss suffered by third parties by way of damage or economic loss or the expense and expenditure of time in defending any proceeding.

83. In the present case, the salvage operation was a one hundred percent success and I have given significant weight to this factor accordingly."

In relation to Article 13(1)(d) his Honour said as follows:

"85. In my view, this paragraph does not contemplate danger to the environment but rather the focus is on the degree of danger to the salvaged vessel itself and the persons and property in it. This factor is directed to assessing the danger to human life and the risk of loss, injury or damage in relation to the salvaged property."

REVIEW OF SALVAGE LAW. IS IT WORKING? DOES IT PROTECT THE ENVIRONMENT?

OPENING REMARKS

STUART HETHERINGTON¹

We have a distinguished panel of speakers. They are as follows:

- Diego Chami. He is the Rapporteur to the International Working Group (IWG) which the Comité Maritime International (CMI) has set up. He is going to summarise the answers which the National Maritime Law Associations (NMLA) have thus far provided to the questionnaire which CMI sent out when we first took on this subject, as well as reporting to you on the International Subcommittee Meeting which was held in London last May. Diego is a Professor of Maritime law at the University of Buenos Aires and Senior Partner of Chami Di Menna and Associates, Lawyers. He is also the author of a number of texts and adviser to the Argentinean Government on maritime matters.
- Capt. Nick Sloane Managing director of Svitzer, South Africa (a member of the Moeller Group). He joined Safmarine in 1980 and transferred to its tug division in 1984. Appointed salvage master in 1991. Joined Svitzer in 2005. He has attended many high profile salvage operations around the world including in Pakistan, Saudi Arabia, Yemen, UAE, the US, Australia, PNG, Brazil, Africa and Hong Kong.
- Todd Busch. We are delighted to have the President of the International Salvage Union (ISU) with us. He is going to explain to you why the ISU wants changes made to the Salvage Convention. Todd is a 23 year veteran of the Crowley Maritime Corporation. He is responsible for several business enterprises including subsidiaries of Crowley: Titan Salvage, Jensen Maritime Consultants, Vessel Management Services Limited and Intrepid Ship Management. They encompass marine salvage and wreck removal, naval architecture and marine engineering,

¹ Vice President, CMI Chairman: IWG & ISC Review of Salvage Convention 1989 October 2010.

vessel construction management, ship management and government contract services. He was at sea between 1986 and 1994. He has represented Crowley in the ISU for over 10 years and has served on the Executive Committee for the past five years. He was elected President of the ISU in 2009.

- Archie Bishop. He has been a regular attendee at CMI conferences in recent years and was particularly involved in the Places of Refuge topic which CMI looked at following on from the incidents with the “*Castor*” and the casualty of the “*Prestige*”. Archie will explain the changes which the ISU proposes need to be made to the Salvage Convention, and especially Article 14.
- Nick Gooding of XL Insurance. He has had many years experience working in the London market. He has been Chairman since 1992 of the London Market Technical & Clauses Committee, he served on the Joint Cargo Committee between 1991 and 2000, he is Chairman of the Insurance Institute of London Lloyds Issues Committee from 2005, he has been Chairman of the Joint Cargo Committee Working Party on the Institute Cargo Clauses Revision since 2006 and he has been on the Lloyds Market Association Professional Standards Committee since 2007. So far as I am aware, he has a 100% record as an expert witness. Those of you who attended the CMI Conference in Vancouver will remember Nick as one of the protagonists in the general average debate which took place at that time. Nick represents the LMA and the LUA and will set out the position of the insurance market on this topic.
- Kiran Khosla. She is the Director, Legal Affairs at the International Chamber of Shipping (ICS) and the International Shipping Federation (ISF). Prior to joining the ICS and ISF in 2006, she was the Manager and then Head of the Defence Department of the Gard P&I Club in London and before that was in private practice in a niche shipping law firm in London. She represented the ICS on the Lloyds Salvage Group and the SCOPIC SCR Committee. Kiran will explain the position of ship owners on this issue.
- Finally, Hugh Hurst. He is employed by the International Group of P&I Clubs and will be putting the views of the Clubs. Hugh is a solicitor who has worked in both the UK and Australia as a solicitor before joining the International Group.

It is anticipated that each speaker will speak for about 20 minutes so we will hopefully have time towards the end of the second session for comments from the floor.

It is my role to, I think, put in context what CMI is doing and some of the issues which the other panellists will be discussing.

Opening remarks from the chairman Stuart Hetherington

Introduction

In December 2008, the ISU wrote to the CMI pointing out that the Salvage Convention 1989 (the Convention) was nearly 20 years old and it was over 30 years since work had first begun on its drafting. It suggested that there was a need for review of certain aspects of the Convention and invited CMI to undertake such a review.

The CMI set up the IWG in 2009 and a Questionnaire was sent to the NMLAs in July 2009.

Questions were asked concerning various matters identified by the ISU in relation to eight articles in the Convention, they being Articles 1, 5, 11, 13, 14, 16, 20 and 27. In addition there is already the Brice Protocol discussed at CMI in Singapore dealing with Salvage of Underwater Cultural Heritage items.

Background

A little over 30 years ago (September 1979) the CMI established an International Subcommittee under the chairmanship of Professor Erling Selvig to study the subject of salvage and prepare a report for the Montreal Conference to be held in 1981. An IWG was set up which drafted a new Salvage Convention to replace the 1910 Salvage Convention (which CMI had also prepared). At the 1981 Montreal Conference a draft text was approved by the Assembly and forwarded to IMCO (which changed its name in 1982).

LOF80

This activity was in response to discussions which had taken place at the IMCO Legal Committee, following on from the “*Amoco Cadiz*” disaster in 1978. Not surprisingly industry responded to the challenge of community concerns and opened the door to providing an extended remedy for salvors in respect of laden tankers. It provided that the ship owners should reimburse the salvor for his expenses, plus a fair rate for tugs, craft, personnel, and other equipment, of up to an additional 15% to the extent that it exceeded any salvage award, the amount of the increment being -dependent upon the value of the result of the salvor’s effort. This term was referred to as the “safety net” (in clause 1(a) of LOF 1980) and its introduction reflected an ever increasing awareness worldwide of the effects of oil pollution on the environment. Prior to that industry had, of course, reacted earlier to the growing environmental concerns caused by oil pollution (the TOVALOP Agreement which was followed by the Civil Liability Convention).

Liability Salvage

As a first step in the work done by CMI, following on a request from IMCO, Professor Selvig prepared a “Report on the Revision of the Law of

Salvage” in April 1980, which is to be found in the Travaux Préparatoires of the Convention on Salvage 1989. That report is as relevant today as it was then. In discussing salvage operations Professor Selvig made the following comments:

“The income of the salvage industry must be sufficient to maintain an internationally adequate salvage capacity. It is probably required that total compensations reach a higher level than at present. Moreover, the risk of incurring expenses without compensation or of incurring liabilities in connection with salvage operations, should not be such that salvors are discouraged from intervening in particular cases”.

Professor Selvig then went on to introduce the concept of “liability salvage”. He said as follows:

“Nevertheless, the concept of salvage should be extended so as to take account of the fact that damage to third party interests has been prevented. Since the ship which created the danger, will have a duty to take preventive measures in order to avoid such damage, this will mean that salvage should refer not to ship and cargo, but also to the ship’s interest in avoiding third party liabilities (liability - salvage). Thus, the ship’s liability insurers should be involved in the salvage settlement and pay for benefits obtained by the salvage operation.”

Professor Selvig took the view that

“Inclusion of the liability interest within the concept of salvage will undoubtedly provide a more equitable distribution of the overall cost of salvage. It may also provide a beneficial encouragement to salvors to engage in salvage operations when third party interests outside the ship are in danger, particularly in cases where the chance of saving ship and cargo is rather remote. Finally, contributions from new sources may enable the international salvage capacity to remain at an adequate level”.

CMI - Montreal Conference

In essence what was approved at the Montreal Conference was what had been drafted by the IWG and presented for debate at the conference.

Salvage Convention 1989

The Salvage Convention came into force internationally on 1 July 1995. Parts of the Convention that could be contractually agreed, became incorporated in LOF90, long before the Convention came into force, which resulted in a close examination by Lloyds Arbitrators of the special compensation provisions of Article 14 in a large number of cases.

“Nagasaki Spirit”

The next development in the story is, perhaps, the decision of “*Nagasaki*

Opening remarks from the chairman Stuart Hetherington

Spirit” (1997) 1 Lloyds Rep 323, described by some as the straw that broke the camel’s back. The House of Lords held that “fair rate for equipment, personnel actually and reasonably used in the salvage operation” in Article 14.3 meant a fair rate of expenditure and did not include any element of profit.

SCOPIC

I will leave others to describe the problems of Article 14 which led to the negotiation of the SCOPIC Agreement. It is an addendum to LOF and is only included as part of that contract if specially agreed in writing. I commend a paper written by Graham Daines, of Thos R Miller, which I had not come across at the time of writing the Discussion Paper which I prepared for the ISC Meeting we held in May. With his approval I will endeavour to place it on the new CMI website with other papers I referred to or utilised in the preparation of that paper. The new CMI website, about which I will tell you more at the Assembly has those materials on it - as does the Conference website.

What’s changed since 1989

In the Discussion Paper I reproduced some of the factors had been identified by the ISU, and others by me, as having changed the salvage landscape since 1989. They included the increasing importance of environmental issues in salvage activities, the many liability Conventions which have been agreed since then, the exposure of salvors and seafarers generally to third party claims, their increasing exposure to criminal liability, their political detention, the “*Castor*”, the “*Prestige*” and I went into some detail about a change which has occurred in my own country, that is the sponsoring of salvage by the Government which has acquired tugs (at the expense of shipowners who contribute to an oil pollution levy based on the quantity of oil they carry into the country-whether as fuel or cargo). I referred to the report of Bureau Veritas in the early 1990’s. I will be interested to hear from delegates whether other countries have had to make similar arrangements.

In the next three hours we will only scratch the surface of the many issues that are being discussed. Inevitably the focus is on Articles 13 and 14 and environmental salvage. There are other issues and I have mentioned the Brice Protocol already. I think you are in for a lively and entertaining debate of a very serious issue for the industry we all work in.

ENVIRONMENTAL SALVAGE REPORT

DIEGO ESTEBAN CHAMI

1. Introduction

I have been committed to summarising two main issues: first of all, the answers to the Questionnaires from the National Maritime Law Associations and secondly, the discussions that took place at the International Subcommittee meeting in London on May 12th 2010¹.

2. Recent history

To start with, I would like to summarize the recent history. As you already know, in May 2009 an International Working Group on Salvage was created by the CMI in order to analyze if the 1989 Salvage Convention calls for amendments. Therefore, as a first step, in July 2009 a Questionnaire was sent by the International Working Group to all the national MLAs. So far, 19 answers have been received. Next, the first meeting of the IWG was held in London on 18th September 2009 in order to analyze the answers received from the MLAs. To listen to the voice of the people involved in the industry, namely the ship-owners, the P & I clubs, the property underwriters, the salvors and the arbitrators, an International Sub Committee meeting was summoned and took place in London on 12th May 2010. As a result, two reports, one for each meeting, have been issued so far. In addition, the Chairman of the IWG presented a paper for the ISC meeting.

As a summary, 2 meetings were held in London (one of the IWG and another of the ISC), 1 questionnaire was sent to all the MLAs, 19 answers have been received so far, 2 reports were issued by the IWG, 1 discussion paper was sent by the Chairman for the ISC meeting.

¹ This paper is just a summary of the main issues of both the questions and answers to the questionnaire and of the debate at the ISC. For more details you can address the reports issued by the IWG.

3. Main issues of the questionnaire

The main matters asked to the MLAs in the questionnaire were the following:

- Could the word “substantial” in article 1.d. create difficulties in interpretation? (we should recall that *substantial physical damage is required for considering environmental damage*)
- Then it was analysed whether the geographic scope for environmental damage is accurate.
- Can public authorities pursue claims for salvage in your jurisdiction? Should they? (art. 5)
- In containership cases or when there is a large number of receivers, for the sake of simplicity, should only the vessel be liable for reward and security despite recovery actions against other properties? (art. 13.2.).
- One of the most important questions posed is: should an entitlement to an environmental award be created and therefore art. 14 amended?
- Then, should a lien against the ship be created for a claim for environmental salvage? Amendment of art. 20.
- Should life salvage claims be made directly against the property owner and not against the salvor? This refers to amendment of art. 16.
- Should publication of awards be encouraged? This refers to an amendment of art. 27.
- Are there any other issues or problems regarding the 1989 Salvage Convention which should be considered for amendment?

a) *The definition of damage to the environment:*

Environmental damage is addressed in several articles of the 1989 Salvage Convention, (e.g. articles 6.3, 8.1.b., 8.2.b., 13.1.b., 14.1, and 14.2.) and it is a condition which enables the salvor the special compensation of articles 14.1. and 14.2. Therefore, the definition of environmental damage is crucial in the structure of the Convention.

According to article 1.d), damage to the environment means: “...*substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents*”.

Therefore, there are three main elements in the definition of environmental damage, namely:

1. substantial physical damage to human health or to marine life or resources,
2. in coastal or inland waters or areas adjacent thereto,
3. caused by pollution, contamination, fire, explosion or similar major incidents.

The word “substantial”

Regarding the definition of environmental damage according to art. 1, d), of the 1989 Salvage Convention, one of the first questions was whether the word “substantial” could create problems or difficulties of interpretation and the answers received included the opinion of the MLAs related to retaining or deleting the word “substantial”. Then, as regards this issue, there were divided positions. Some MLAs were in favour of retaining the word substantial or replacing it by a similar concept or supported excluding minor cases. Other MLAs favoured deleting the word substantial because of possible interpretation problems or inconsistency, which was also the ISU proposal. It should be added that, deleting or retaining the word “substantial” was discussed during the debates at the Diplomatic Conference that led to the 1989 Salvage Convention and the word remained.

Geographic scope of application

According to the present text, the environmental damage should occur “*..in coastal or inland waters or areas adjacent thereto...*”. The question was whether it should be widened to territorial sea and Economic Exclusive Zone or wherever such damage may occur. A large majority of MLAs favours the extension to territorial waters and to the exclusive economic zone. Some MLAs favours even the extension to wherever such may occur and this is also the ISU proposal. Very few MLAs supported no change. It should be mentioned that again, at the Diplomatic Conference, it was said that “*...in coastal or inland waters or areas adjacent thereto...*” was a vague expression that was adopted in order to avoid speculative claims and therefore, the 1989 Convention excluded damage occurred in high seas.

b) Salvage operations by public authorities:

As you know, the Salvage Convention states that it shall not affect any provisions of national law or international convention relating to salvage operations by or under the control of public authorities (art. 5.1.) and that salvors carrying out such operations are entitled to avail to the rights of the Convention (5.2.) and that salvage operations carried out by public authorities are excluded from the Convention and submitted to national law (art. 5.3.)

At the discussions that lead to the Convention two main issues were considered.

One, if public authorities, such as the coastguard or fire services, might recover in salvage and also to preserve salvors right to an award when services were performed under the control of public authorities.

Now, the questions posed were:

Question:

1.1 *Can public authorities pursue claims for salvage in your jurisdiction?*

1.2 *If they cannot, do you think it would improve their position if Article 5 paragraph 3 was deleted or amended?*

As regards the question if public authorities can pursue salvage claims in their jurisdictions, most of the answers were yes and the provision of art. 5 should remain unchanged. A few MLAs answered that public authorities were entitled to obtain a salvage reward only in case they have performed services beyond their authorities' duties. Other MLAs answered that no reward should be paid in case the services were carried out by the military or by the navy and some stated that they are entitled only to a cost recovery.

c) Salvage Award - Payment by one interest: for and against

As we also know, according to art 13.2. the salvage reward is paid by the vessel and other property in proportion to their salvaged value. Then, another important issue in which the opinion of the MLAs was requested is if, when there were a large number of receivers, for example containership cases, the salvage reward should be paid by one of the interests, e.g. the ship or cargo, and then recovered from the rest of the interests in their proportion. Almost all the MLAs answers' were no. It should be mentioned that for example according to Netherland law, the salvage reward is paid by the shipowner who is entitled to recover the proportion due by other properties.

d) Considering amending art. 14 to create an environmental award

Creating the environmental award: this is the main issue. May be it can be said that if there's no agreement to create what is called the environmental award, it is not worth amending the 1989 Convention.

Those against

It was noted that a slight majority of MLAS were against creating an environmental salvage award and the main reasons alleged were that it would disrupt Montreal Compromise or damage the structure of the 1989 Convention. It was also said that it would lead to uncertainty and that the environmental salvage has the opposition of the shipowners & the P I clubs. Others stated that there was no need for a change, taking into account that the salvor would get a reward through articles 13 and 14 of the 1989 Convention.

Those in favour

On the other hand, those in favour of the amendment considered that the SCOPIC clause used by the industry in replacement of the special compensation of art. 14, shows the deficiency of the 1989 Convention and that nevertheless, the industry support was needed including clubs, underwriters and the International Salvage Union. Some added that it should be paid by ship and other properties.

However, it should be pointed out that some of the MLAs, including a

few that are against the environmental salvage, stated that the wording art 14 should be simplified, that we should begin studying the issue, or that the matter should be revisited.

e) Statutory lien

Regarding the issue of creating a statutory lien against the ship for the environmental award, a large majority answered no, stating that there is already a lien or that the matter is reserved to the Convention on Maritime Liens or to national law. Yet, few MLAs answered that a lien should be created over the ship and other properties while others recall that the salvage reward is a maritime claim according to the 1999 Arrest Convention (article 1.1.c.) where the special compensation of art. 14 is included. However, the convention is not yet in force and the special compensation does not include the environmental award.

f) Life Salvage directed against the property or salvor

As regards the question if life salvage should be directed against the property rather than against the salvor half of the MLAs answered that no change is needed. The other half said yes, it should be conducted against the property rather than against the salvor. One of the reasons for this proposal is that as life salvage was not an element for assessing the reward, it would be unfair if the property salvor had to pay the life salvor when that life salvage was not considered in assessing the property salvor's reward. This matter –directing the claim against the property rather than against the salvor- was discussed at the Diplomatic Conference in which the concern was raised stating it would imply granting a separate reward for life salvage, and this issue received no support.

g) Publication of awards

Publication of awards is a very important subject, even though it appears to be a minor one: certainty on the one hand, and confidentiality on the other hand, are at stake, and that is why at the Diplomatic Conference the matter was extensively discussed. The majority of the answers received at the IWG considered that the publication was not necessary or that it was a parties' or an arbitrators' issue.

Other MLAs, considered that arbitrators' decisions should be published but it required the parties' agreement or answered that it was a national law issue or that only a summary should be published. What's more, the publishing of the awards should be subject to opposition, or even some mentioned that the award should be published without parties' names.

h) Other issues to be considered

When the question was posed as to whether there were any other issues to be discussed, most of the MLAs answered no. However, some of the

proposals were that liability to third parties should be excluded from art. 13, or else to grant the owner the right to retain the cargo until a letter of undertaking is provided to the salvor. Others considered that it is too early to amend 1989 Salvage Convention.

Other matters proposed were that the salvor's misconduct should not affect human's life salvor (arts. 16.2. and 18).

4. Discussions at the International Subcommittee Meeting

Now, we should turn the page and address the discussions at the International Subcommittee Meeting that took place in London on 12th May 2010 in order to hear the people involved in the industry. Two main positions were observed: those in favour of amending the 1989 Salvage Convention to create an environmental award, and those against.

In favour of change, it was said that today is a different world from that of 1989, we face a more litigious society in which environmental issues are of greater importance than when the 1989 convention was drafted. There is a stricter control from states and harbour authorities, while there is higher state involvement in salvage and salvors are more exposed to liability. Plus, there is a more concentrated market in which shareholders of salvage companies need incentives to invest. It was also said that big corporations are more risk adverse than family companies.

Other changes were mentioned, indeed the following acts and conventions were signed: OPA'90, Oil Pollution Preparedness, Response and Co-operation Convention 1990, HNS Convention 1996, UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001, The Bunker Convention 2001, FUND Protocol 2003, The Wreck Removal Convention 2007, among others.

On the other hand, at the International Subcommittee Meeting we heard about the criterion for the International Chamber of Shipping and the International Group of P & I, in order to analyze the ISU's amendment proposal. It was said that it should be sufficiently clear, substantial and tangible to understand, it would demonstrably improve casualty response and benefit those currently paying, and it would identify what elements of the current casualty response regime would be either retained or adjusted.

It was also mentioned that it was unclear how the ISU proposal would improve environmental salvage response or how it would benefit ship-owners and liability insurers, or how an arbitrator could assess what damage had been prevented in order to grant an environmental award. Furthermore, it was added that liability underwriters have certainties from the SCOPIC clause and that an environmental award might endanger that certainty. In addition, if the salvage award of article 13.1.b) -skill and efforts of the salvors in preventing or minimizing damage to the environment- was paid by property

underwriters, this was part of a compromise by which the SCOPIC compensations paid by liability underwriters were excluded from general average, and therefore not recovered from the property underwriters.

The comments received from the other side were that in today's world the environment is everything; it is at the forefront in every major casualty, in which the personnel comes first, the environment next, and the property comes third. What's more, it was said that the proposal of creating an environmental award is simple: art. 13.1.b) should be transferred into an environmental award in art. 14. It was also mentioned that there are two main elements in every environmental award: one the one hand, preventing and minimising damage to the environment, remove bunkers, lay booms, etc. and on the other hand, preventing environmental liabilities to third parties.

5. Other reasons for and against considering an environmental award

First of all, salvors should be encouraged to invest more in pollution prevention and response equipment. Then, SCOPIC, and art. 13.1.b), do not provide sufficient reward to invest. It was stated that the problem with the SCOPIC clause –which works- is that it is tariff based, and even though SCOPIC rates are renewed every 3 years (2007/2010), SCOPIC does not allow to make a reward for success and does not provide sufficient incentive to invest. As regards art. 13.1.b), it was said that it is insufficient to reward environmental salvage and that property underwriters pay for something they do not actually insure, and therefore the environmental award paid by liability insurers will be a remedy to an inequity. It was added that the reward of art. 13.1. is limited by the salvaged value of the ship and the cargo, which discourages investment.

It was added that the ERIKA & PRESTIGE cases occurred and more litigious society enhanced the importance of environmental salvage. It was also said that as the CLC and FUND Conventions were amended, the Salvage Convention also calls for a change and that art. 14 showed not to have worked, it was replaced by SCOPIC and that therefore, a new compromise was needed starting from scratch.

However, it was also said that amending the 1989 Convention is not in the IMO agenda and that in order to amend the convention the governments should be convinced that there is a compelling need for change.

Other opinions expressed that IOPC Funds are reluctant to assess natural resource damages. On the other hand, it was stated that the costs of response (equivalent to the liability prevented) are available in ITOPF.

6. Bunker Removal

The bunker removal was always present at the discussions. It was said that it is a previous authority requirement and even though it is safer to keep the bunker on board, it was said that it is a risky and time consuming operation

in which specialised equipment is needed. And then, salvage award might help to persuade to invest in equipment. It was also pointed out that the bunker removal was not necessary to save the vessel, and that it was anyway reflected in an award paid by the property insurers. In fact, as proposed, that should be paid by the liability insurers.

7. Limitation or cap of the environmental award

As regards the limitation, the proposal was to consider either the gross tonnage of a ship multiplied by x SDR, or else make use of the existing funds as the CLC Fund.

8. Arbitration

As regards arbitration, arbitrators see little evidence of specific environmental threat. It was also mentioned that awards do not reflect a substantial proportion of the work done in environmental protection. Furthermore, there is a tendency to think in terms of physical benefits –the property saved- instead of thinking about the liability avoided. We also heard that arbitration awards would need to turn to consider the evanescent concept of diminishing environmental liabilities to third parties. For that purpose, more evidence of the scope of danger might be needed, and the award should justify costly enquiries. It was added that there is no difference from assessing the award under Article 13.1.b) from assessing an award for environmental salvage. Thus, there shouldn't be any real difficulties for arbitrators in arriving at an award.

9. Emergency Towing Vessels

The issue of Emergency Towing Vessels (ETVs) was also discussed and it was mentioned that they were introduced in some countries. In some cases were funded by tax paid by shipowners and then presumably transferred into the freight.

The work of the European Maritime Safety Agency (EMSA), based in Lisbon, was also mentioned. It was asked whether the ETVs mean that the salvage industry can't provide salvage services or that they are needed for assistance. Yet, are ETVs able to assist in a real major situation?

10. Conclusion

The possible course of action to be taken and the most ambitious one was drafting a new Salvage Convention or instead, drafting a Protocol to the Salvage Convention. Or the task could only be assisting in redrafting the LOF or just assisting the interested parties in further discussions or else only debating topics in CMI forums, which is what was done at the Buenos Aires Colloquium on 25th October 2010.

ENVIRONMENTAL SALVAGE: THE MARINE PROPERTY UNDERWRITERS' VIEW

NICHOLAS GOODING¹

1. Introduction

I am here today representing London Market Marine Property Underwriters

The terms of the 1989 Salvage Convention were formulated at a Convention in Montreal in 1982. In the 28 years since then, salvage operations have changed substantially. There have been many fewer LOFs and the number of substantial oil spills has greatly reduced. At the same time we have seen an increase in the liabilities of both salvors and shipowners, particularly in relation to third party liabilities relating to pollution and wreck removal, and far greater government interference in the conduct of salvage operations.

Hull and Cargo Underwriters mainly cover damage to property but increasingly they are being asked to pay salvage which includes remuneration covering measures which do nothing to mitigate their potential physical losses but rather those of Governments and P&I liability insurers. Accordingly what the marine property underwriters want agreement that those steps which are taken to mitigate or reduce the liabilities of the shipowners to third parties should be paid for by either governments or shipowners' third party liability insurers since it is for their benefit that such steps are being taken.

2. Why Reform is needed – The Legal Perspective

Hull and Cargo Underwriters insure damage to property, that is loss and or damage to the ship's Hull and Machinery and to cargo carried; save for salvage, general average and (in the case of hull policies) third party collision liability, hull and cargo policies do not cover liabilities. However, the salvage

* Senior Cargo Underwriter XL London Market Limited.

system makes Hull and Cargo Underwriters pay for measures to mitigate pollution and other liabilities insured by others (such as the removal of bunkers and the placement of oil booms etc). This is partly due to the fact that when fixing salvage awards Article 13.1(b) of the 1989 Salvage Convention requires tribunals to take into account “the skill and efforts of the salvors in preventing or minimising damage to the environment”.

Additionally, English Courts and Lloyd’s Open Form Arbitrators have for many years, taken into consideration potential liabilities to third parties as a distinct element of danger when assessing salvage awards even though the Convention is silent on the point. In the “WHIPPINGHAM” [1934] 48 LLR 49 a ship lost control in a gale while taking action to avoid a collision and fouled some yachts and risked fouling more. Bateson J. in rewarding the salvage tug said:

“The mere saving of a vessel from danger to other ships which might result in claims is a service, to my mind, because although the claim may not be a good one there is considerable damage attached to successfully defending a claim, because there is all the expense which you don’t recover even when you are a successful claimant. I think that in itself would be a ground of claim for salvage.”

Despite the fact that Article 13 of the 1989 Convention does not provide that the “Whippingham factor” should be taken into account in practice LOF Arbitrators do have regard to the avoidance of potential liabilities to third parties when setting their awards. In some cases this can account for a significant proportion of the award: Imagine for a moment a vessel which is drifting onto a rocky shore with a very real danger that it will go aground and break up with all the environmental damage that a spill of bunkers might cause. A salvage tug manages to get a line on board in difficult weather and tow the casualty to safety. In practice an Arbitrator will have regard to the sum that has been saved in pollution fines, clean up costs and compensation even though there is nothing special which the salvor did to prevent damage to the environment per se – all the salvors’ work was done to save the ship and cargo. In this way marine property underwriters are already rewarding salvors (sometimes admittedly in a limited amount) for the work that they do to avoid or minimise the third party environmental liabilities of shipowners.

3. The Change in Salvage Operations

(a) Increase in Governmental control of salvage operations

The last 25 years had seen a massive increase in government control over salvage operations across the world. The invention of the Secretary of State Representative in the UK system which, if the EU get their way, will spread throughout the EU littoral states is just one example. Government intervention and control has altered the priority of salvage operations. Para

7.8 of the IMO's Guidelines on the Control of Ships in an emergency (19 October 2007) states:

“The Salvors should ensure that the salvage plan and actions represent the best environmental option for the Company and the coastal State(s) concerned.”

As far as the IMO and most Governments are concerned the salvage of hull and cargo are of far less importance than the environment.

(b) An example of how Government can increase the cost of a salvage

To illustrate how this shift of priorities has affected salvage operations I would like to tell you the story of the “Artemis”, a 2,545 grt Combi 3850 design general cargo ship in ballast which went aground on a sandy beach in a resort on the west coast of France on 10 March 2008 at high tide. On grounding the casualty had only 42 cubic meters of gas oil (not marine diesel or fuel oil), 4,500 litres (4.5 tonnes) of lubricating oil in the engine room tanks and a further 500 litres of hydraulic oil in drums. Soundings showed the vessel's shell plating was intact.

An LOF was signed with leading French professional salvors and an Ocean-going tug was on site the same day. A connection was made on 11 March 2008 but it parted during the first re-floating attempt that evening. It was re-connected overnight and on 12 March 2 further re-floating attempts narrowly failed to re-float the casualty. SCOPIC was invoked. The level of high water was now set to fall for some days so time was of the essence. It was decided to dredge away some sand at the next low tide to allow the vessel to re-float more easily.

At this point the authorities intervened and ordered the removal of the vessel's bunkers, pending which no further re-floating attempt would be permitted; this meant no further re-floating attempt could be contemplated until at least 20 March. In the view of both the salvors and the Master the removal of the bunkers was unnecessary but to decline to comply would have risked the authorities assuming the conduct of the operation and incurring unlimited and uncontrollable expenses.

The Master believed there was no danger to the environment; although the casualty had suffered some bottom damage on grounding, her shell plating was at no point breached, the fuel oil was in a tank well away from the ship's bottom, the vessel was securely ballasted down and could have refloated itself when the high waters returned in the medium term if left alone.

The bunker removal operation took longer to organise than to carry out and was completed by 19 March. Luckily the authorities were persuaded that another refloating attempt could be carried out on 20 March and on that day she refloated. It is hard to say how much time and money the bunker removal operation cost. It probably extended the duration of the salvage by anywhere between 2 and 7 days. The issue here is that the out of pocket expenses of the operation and the cost of keeping 2 tugs and a salvage team mobilized were

paid for by the Hull Underwriters even though they contributed nothing at all to the refloating of the casualty. As a very rough estimate the cost of the salvage was increased by one third.

(c) *Liability Creep*

The increase in the size and scope of environmental liability legislation that has been introduced over the last 25 years in numerous countries has made shipowners liable for damage to things which nobody owns such as wild birds, coral and even the ordinary seabed. The Ballast Water Convention is just one further example of this “liability creep”. This change of attitude to the environment extends to mariners training: In a Seafarers’ Training Manual published in 1967 Masters were encouraged to pour oil on rough seas on the lee side of a ship to assist pilots boarding or launching lifeboats in difficult conditions. This is now a criminal offence in England (s.85 Water Resources Act 1991 as re-enacted in the Environmental Permitting (England and Wales) Regs 2010, Regs 12(1) and 38(1)).

(d) *Technological Advances*

Further salvage and wreck removal technology has developed apace over the last 25 years enabling wreck removal orders to be made in respect of vessels which, years ago, simply could not be removed. These hi tech wreck removal operations, such as the “KURSK” and the “TRICOLOR”, can be extremely expensive. Similarly bunkers can now be removed in circumstances in which, 25 years ago, it was just impractical to attempt such an operation: This just encourages the Authorities to make bunker removal orders which may be unnecessary.

4. Marine Property Underwriters’ Aims

Marine Property Underwriters are content to pay to mitigate the risks that they insure but they want governments and/or P&I Insurers to pay for measures which mitigate the risks that they bear too. We are looking to the reform of the salvage structure by a review of the way that environmental salvage is awarded to help achieve this. Measures which mitigate both kinds of loss (i.e. losses borne by marine property underwriters and losses born by P&I Insurers/governments) should be apportioned under any new system.

5. Types of Award

We therefore propose that in assessing salvage remuneration 3 types of award could be made:

- (a) A Marine Property Salvage Award; this will be assessed by reference to the traditional Article 13 factors except:
 - (i) Article 13(i)(b) Salvage Convention 1989 (“the skill and efforts of the salvors in preventing or minimising damage to the environment”)

- (ii) The extent of environmental liabilities to third parties avoided by the shipowners; and
- (b) An environmental liability salvage award focusing on work done to avert or minimise environmental liabilities (i.e. pollution by oil, HNS and wreck removal) and the losses to the Shipowner which such liabilities might give rise to. This would include items 5(a)(i)-(ii) above; or
- (c) SCOPIC or Art. 14 (payable only insofar as it exceeds 5(a) and (b) above).

It is envisaged that (b) and (c) are alternatives and it would be for the salvor to choose which secondary award mechanism should be incorporated by notice in writing to the shipowners.

There will usually be cases where work is done by a salvor which benefits both property and liability insurers and in such cases it will be the role of the arbitrator to apportion the extent of the benefit conferred on each type of interest (marine property and marine liability insurers).

It is not proposed that any weight should be given to the avoidance or minimisation of the potential liability of the Shipowner to crew, cargo or in respect of collision or any liabilities of those interested in the cargo. They fall outside Art. 13 at present and are not environmental liabilities and are therefore not suited to inclusion among the factors to be considered when calculating an Environmental Salvage award.

I shall address, in a moment, the relationship between SCOPIC and Art. 14 under the proposed awards.

6. Calculating the environmental liability award

Marine Property underwriters recognise the success of the tariff based SCOPIC system as policed by a Special Casualty Representative (“SCR”) and would like to adapt that in an attempt to minimise disputes over the calculation of the environmental liability award. Accordingly it is proposed that this type of award should be calculated by:

- (a) Costing all steps taken which are aimed in whole or part at minimising environmental liabilities to third parties in the current SCOPIC tariff manner.
- (b) Apportioning (where necessary) the extent to which each step is directly and indirectly aimed at saving the property and minimising environmental liabilities. It is suggested that measures taken which are aimed both directly and indirectly at the reduction of environmental liabilities should be considered for this purpose. Steps adjudged to have been taken (following the apportionment) for the preservation of property should continue to be remunerated under the existing Art 13/SCOPIC system. Steps which are solely designed to avoid or

minimize damage to the environment should be the subject of the environmental liability award alone, and steps which are designed both to preserve ship and cargo and preserve the environment should be apportioned between ship and cargo.

Steps (a) and (b) above would initially be at the SCR's discretion (but with a right of appeal to the Court or arbitrator).

(c) Arriving at a "cost" for the environmental liability award and then uplifting the environmental liability award by a factor calculated by reference to the degree of risk that the liability would crystallize and the extent of potential environmental liabilities averted or minimised. Clearly this factor is not one which an SCR can reasonably be asked to determine. It would have to be determined by an arbitrator in the absence of agreement. The upper and lower limit of the uplift will have to be the subject of negotiations, but a minimum could be 25% (as for SCOPIIC) and a maximum might be 100% (as in Art. 14 exceptional circumstances) subject to the cap or overall limit that I shall come to.

7. Limit for environmental liability award

Just as the Article 13 property award is limited by the value of the salvaged fund it is proposed that the environmental/third party liability award would also be limited to a figure calculated in accordance with the ship's tonnage. Precisely what this figure should be will obviously be a subject for negotiation and it may be appropriate to have a higher limit in the case of oil tankers than would apply to other vessels. As a starting point for these discussions we propose that liability underwriters fix a limit of US\$180 per gt with a minimum limit of US\$3,600,000 (the limit of a vessel of 20,000 gt) and a maximum limit of US\$25,000,000 (the limit of a vessel of 138,889 gt); the tonnages relate closely to the CLC 1992 limit tonnages as amended by STOPIA.

8. Security

(a) **Ship:** When demanding salvage security from ship the salvor will need to quantify his security demand in respect of his Art. 13 (as amended) and environmental salvage/SCOPIIC awards separately. In the first instance the person responsible for lodging security shall be the owner (as at present). Security may be given in one, two or any number of guarantees so long as the total of all such guarantees match the sums demanded in respect of each of the awards claimed.

(b) **Cargo and Time Charterers:** Cargo and Time Charterer's bunkers will remain liable only for Art. 13 awards so the current system of collecting security will be unaltered.

9. Evidence

Shipowners and their insurers may, if separately represented, adduce evidence separately.

Access to the shipowner's witnesses should be available to both those representing the owner's hull and machinery underwriters and liability underwriters jointly where both sets of insurers are involved. Efforts should be made to adduce only one statement from each witness.

10. Representation

Owners, property and the ship's liability insurers should be entitled to be separately represented before the appropriate tribunal (including LOF arbitrations) under this system. Insurers would not be a party to the LOF contract so there will be no direct right of action against marine property or liability insurers – the right of action to enforce an award will lie against the shipowner and cargo owner alone or under any guarantee(s) given to secure their liabilities.

11. Article 14 / SCOPIC

Assuming the above system is introduced there will be less need for an Article 14 or SCOPIC award in the future save where there is little or no danger of environmental liabilities.

12. Payment

The owners of the ship shall be liable to pay both his proportion of the Art. 13 award (as amended) and all of the environmental liability award in full; the environmental liability award will be payable in full in addition to the property award – it will not be a top up award, as the Article 14/SCOPIC award is. If the salvor elects not to claim an Environmental Salvage award Art. 14/SCOPIC will continue to be payable only to the extent that it exceeds the amount of the amended Art. 13 award. This will require an amendment both to the Convention and to LOF.

It is envisaged that the liability to pay the environmental salvage award should be covered by the P and I insurers of the ship just as Art. 14/SCOPIC is now.

Cargo and Time Charterers' bunkers interests will only be liable for their proportions of the Art. 13 award; no environmental liability or SCOPIC award will be payable by them.

13. Training and Investment

Marine property underwriters would like to see a mechanism for

ensuring that all, or a substantial portion, of the environmental liability salvage award is used to improve training and investment in the salvage industry perhaps by forming a Trust to train salvage crews and lend to the industry to allow investment in salvage craft and equipment; this will go a significant way towards justifying the introduction of the environmental liability salvage award and avoid the impression that it is merely there to enrich the ISU members' shareholders.

14. Implementation

Marine property underwriters propose that the 1989 Salvage Convention should be replaced by another convention entirely along the above lines. However they would be content to support these measures in a Protocol if this became a preferred option.

15. Conclusion

The way in which casualties are dealt with has changed completely in the last 25 years. Far greater emphasis is now placed upon environmental protection than was the case when the 1989 Convention's terms were sketched out in Montreal in 1982. This has led to far greater expenses under Article 13 much of which has been caused by pollution avoidance on the orders of public authorities. It is only fair that this increased element in the cost of salvage should be paid for either by those who insure it or those who order it and it is this which hull underwriters will be arguing for during the debate on environmental salvage.

SALVAGE LAW – IS IT WORKING? DOES IT PROTECT THE ENVIRONMENT?

KIRAN KHOSLA*

Good morning ladies and Gentlemen, It is my honour to be invited here by the CMI today to talk about the subject of salvage and the environment. Now of course this subject albeit with a somewhat different emphasis, has already, even before today, been the subject of a lot of discussion for several years now between the Industry associations most directly concerned with salvage and the environment through the offices of the Lloyds Salvage Group. Lloyds of course administers the most frequently used contract for the provision of salvage services, the Lloyds Open Form (LOF). These discussions have involved shipowners, salvors, and property and liability insurers. However, despite these extensive discussions, the industry associations have been unable to agree on a consensus and we now face the same discussion within the CMI.

We find it encouraging therefore that the title of the panel discussion takes us back to square one, asking the very pertinent question – is salvage law working and does it protect the environment? We think this will help to focus on the real issue and with a full discussion, we hope that we can reach a consensus.

Before I go on to put forward our answer to the posed questions, it is important to briefly describe where we are at the present time and why.

1. Salvage services are of course absolutely essential to the safety of all marine adventures but strangely, despite their essential nature, they are also voluntary. The two characteristics explain the consistent theme of public policy to encourage and support salvors by providing an incentive for them to come to the aid of vessels in the event of a casualty;

* International Chamber of Shipping. The International Chamber of Shipping (ICS) and the International Shipping Federation (ISF) are the principal international trade associations and employers' organisations for merchant ship operators, representing all sectors and trades and over 75% of the world merchant fleet.

2. Salvage of property has historically been on a “no cure-no pay” basis, in other words, if there is no success in salvaging property, the salvor earns no reward;
3. The salvage award has been based only against the property salvaged, usually the ship, freight and cargo. Different jurisdictions may also allow salvage for other items but the generally accepted principle is that salvage is claimable on the salvaged property. All of these interests pay the salvage Award pro-rata to the value of their salvaged property, irrespective of which was at the greatest risk or who received the greatest benefit. This last aspect is of particular significance in the context of the discussion today.

These fundamental principles were enshrined in the first international Convention on salvage, the 1910 Convention. It will be noted from this that there wasn't then any express provision regarding steps taken by salvors to protect or prevent pollution to the environment.

A salvor who prevented a major pollution incident but did not manage to save the ship or the cargo, received nothing. There was therefore little incentive for a salvor to undertake an operation which had only a slim chance of success. These concerns began to surface in the late sixties in light of the changes to the marine transportation sector with the design of bigger ships and the increase in transportation of vast quantities of oil with their potential to cause huge environmental damage in the event of a spill. The incidents of the *Torrey Canyon* and the *Amoco Cadiz* helped to concentrate minds further.

1910 Convention Salvage *Not* Working

It was seen that the salvage regime was most definitely *not* working to the extent that it failed to provide salvors with encouragement to come to the aid of vessels when there was little prospect of earning an award commensurate with their time and outlay in taking steps to avoid environmental damage.

Discussions soon therefore began on a revision of the Salvage Convention. And right at the top of the list for ideas being discussed was the need to devise a means by which salvors would be encouraged to come to the aid of casualties to also prevent damage to the environment as well as salvaging property.

The Salvage Convention of 1989 was subsequently agreed principally to address these concerns.

In fact, the commercial parties to the salvage contract had addressed this difficult issue already in LOF 80 which introduced some new concepts such as an enhanced award, and a “safety net”.

The initial drafting work within the CMI international sub-committee drew heavily upon the contractual compromise in LOF 80 and incorporated

also the “Montreal Compromise” agreed at the CMI meeting in 1981. This was a package of carefully balanced and delicately negotiated measures, whereby shipowner and cargo interests agreed to increase their present liabilities for pollution prevention. The Montreal Compromise was incorporated into the final Convention.

The 1989 Convention recognises from the outset in the preamble, and places in context, the importance of salvage services undertaken for the protection of the environment and that the need to address it is one of the reasons for the review of the Convention.

So, how did the new Convention achieve this?

It did so first through establishing in:

Article 8

This provides for a duty and liability on all parties to the salvage, owners, cargo and salvors to assist in and carry out the salvage with due care, and in so doing, to prevent or minimise damage to the environment. .

Article 13

- This provides for a reward which is modelled on the traditional salvage award;
- It is not available unless the salvor has produced a useful result;
- Importantly and in line with traditional principles of salvage law, it cannot exceed the salved value of the saved property;
- Its quantum is fixed with reference to the traditional list of factors; But to these traditional factors, Article 13(1)(b) adds “the skill and efforts of the salvors in preventing or minimizing damage to the environment”, which courts must take into account as a criterion for enhancing, or decreasing the reward.

The Article 13 award is paid by the property interests. This means that it is paid for by all property interests and I stress here *all*, property interests, in other words, it includes, cargo freight and, significantly, the ship.

Article 14

This on the other hand, signified a fundamental change to the traditional “no cure-no pay” salvage law principle in that:

- It provided for special compensation for providing services to prevent environmental damage but where the salvage award under Article 13 is inadequate to properly compensate:
- This compensation is based on salvors’ expenses;
- The Article 14 special compensation is not dependent on success unlike “no cure-no pay” principle governing Article 13.

Salvage Law – Is it working? Does it protect the environment?, by Kirian Khosla

- The total amount recoverable by a salvor may now exceed the total value of the salvaged property compared with the traditional cap set by the salvaged value of the property.
- The Special Compensation in Article 14 is paid by the liability insurers, in other words, the ship *alone*.

In this way, all parties to the marine adventure have an express, explicit, duty to protect the environment.

The agreements on articles 13 and 14 were supplemented by two more compromises.

The first is contained in the “Common Understanding” of the Diplomatic Conference, attached to the Convention. This states that courts are not required to fix an Article 13 award up to the maximum salvaged value of the property before assessing special compensation under Article 14. In other words, Article 14 is not only triggered in cases where an Article 13 award exhausts the salvaged fund; courts are entitled to calculate and award special compensation in all cases where the Article 13 reward is lower than the appropriate Article 14 compensation.

The other, somewhat less well-known, compromise was that the enhancement in the Article 13 award would be allowable in general average whereas the special compensation in Article 14 would not. The York Antwerp Rules were amended accordingly in 1990. The purpose of the agreement was to ensure that shipowners only would be liable for the Article 14 compensation.

The background to the Salvage Convention just described explains the very carefully negotiated compromises between the various interests and the principles underlying it. It's important to stress that these compromises were regarded and agreed as a package and therefore to amend any part of it would entail an unravelling of the whole.

The principles reflected the concepts in the public law Conventions of the CLC, the Fund Convention, and later the HNS Convention and just recently, in the discussions leading up to the revision of the HNS Convention by way of the new Protocol. These Conventions recognise that all parties to the marine adventure and governments share a responsibility for the environment and its protection.

So now we come back to the first question - Does it Work? But we also have to ask the questions – for whom does it work?

The basic principles of the 1989 Salvage Convention were applauded for its focus on preventing pollution and encouraging salvors to respond to that threat. In practice however, it became apparent that the mechanism of Article 14 was cumbersome and contentious and in a number of respects, they were

causing difficulty for salvors and those paying for the Special Compensation (the shipowner through its liability insurers) when there was the threat of environmental damage. These problems were however resolved between the industry associations responding proactively to the problems that came to light. The compromise that emerged from this was the industry-agreed SCOPIC clause to be inserted in the LOF form.

- SCOPIC is an alternative mechanism to Article 14 for remunerating salvors for preventing or minimising damage to the environment;
- It is designed to be used in conjunction with LOF and can be invoked by the salvor at any time during the salvage operation;
- It contains agreed tariff rates, which are both profitable and purposely generous, for personnel, equipment and tugs.

The rates were increased significantly in 2007 and the Industry associations are presently in discussions again, hoping to finalise agreement on increases later this year.

SCOPIC provides salvors with the certainty of a reasonable and profitable reward for preventing or minimising damage to the environment in cases which might otherwise not be financially attractive i.e. where prospects for success (and therefore the earning of a traditional Article 13 award) are slight.

The clause has effectively disposed of all the difficulties associated with Article 14 and when incorporated and called into use, it has resulted in an efficient and orderly provision of salvage services for the prevention of pollution to the environment and generally on an amicable basis. It's important to note that the SCOPIC clause is rarely arbitrated, I think from the last set of statistics from the ISU, only about 6 or seven times.

By that analysis then, the salvage system works! It works in that it rewards salvors for their efforts in saving property and provides an enhancement if they have taken steps to avoid damage to the environment. It also encourages them to take such steps even when the salvage award is likely to be too small to adequately compensate them for taking such steps, through the special Compensation scheme. That is certainly shipowners' analysis and also of the IG Clubs. So what do the Salvors have to say?

Quote from the ISU:

ISU President as reported in the *Salvage World* magazine in September 2007.

“The importance of SCOPIC is that it provides the all-important financial incentive when salvors are confronted with cases which might otherwise lack financial viability. Given Society's zero tolerance of pollution, it is important that salvors have this incentive to respond to all casualty-related pollution threats – even when property values are low and the risks are high. The fact that the international P&I system has agreed to an increase in the SCOPIC tariff confirms this system's

valuable role in preventing damage to the environment. The decision also contributes to the maintenance of high levels of salvage service. ...”

And more recently at: www.LOF-at-ISU.com.2010:

“The latest edition, LOF 2000, is the tenth revision. Throughout its long life LOF has evolved to reflect changing needs. This is why it remains fresh and fit for purpose in the 21st Century.”

Somewhat confusingly therefore, salvors also say that in today’s marine and liability environment, they still need greater incentive to undertake salvage operations. They say this because:

1. Greater government intervention in marine casualties and salvage operations can mean that salvors are deprived of the opportunity to earn a decent salvage reward. This is as a direct result of Conventions such as the Intervention Convention which allow governments to dictate the course of the operation following a pollution incident and can result in actions which while beneficial to the environment result in reducing the value of the salvaged property so that the salvors earn little or nothing;
2. There is a declining workload in the salvage sector;
3. Growing criminal and civil liability as a result of for example, the European Liability Directive acts as a disincentive to get involved;
4. There is a disproportion between the salvage award and the benefit to the environment.

The International Salvage Union has now therefore proposed that salvors should be entitled to a separate environmental salvage award, distinct from that which they earn for salvaging property, when they have carried out salvage operations in respect of a ship or cargo which has threatened damage to the environment.

Interestingly, the salvors initially presented the concept of Environmental salvage principally on the grounds that the industry was in financial difficulty and needed more funding if it is to survive. ICS and the IG were prepared to examine this initial claim and requested detailed information but the ISU was unable to verify the claim of financial difficulty. Indeed, the more closely we considered this issue and the statements made by salvors themselves, it became clear that while pure salvage in itself is not generating as much income from salvage operations largely due to improved safety on board ships, through improved design, and improved management procedures, and fewer incidents as a result, there is at the same time an uplift in related work such as wreck removal, towage and heavy lift work which salvage companies also engage in. In fact salvage companies overall seem to be working very profitably. In fact, we fully expect that their work will increase once the Nairobi Convention on Wreck Removal, adopted in 2007, enters into force.

And in response to salvors’ comment on increasing criminalisation, I can

only say that this is a real danger that faces all seafarers today and not just salvors and the whole legal and shipping community has to respond vigorously to overturn this trend and persuade governments that it is not conducive to safer ships and seas but the opposite...but that's a discussion for another day.

Salvors' now seeming only rationale for introducing the concept is that in recent times, there has been increasing attention on protection of the environment when there is a casualty and often this takes priority in any salvage over and above any operations to save property. The ISU claim that the operations they perform to protect the environment benefit the liability insurers enormously by way of reduced/minimised pollution liability and yet they, the salvors are not entitled to a salvage award that would reflect the benefit to the P&I interests.

At the same time, Marine Property Underwriters (MPU) have expressed an interest in revising LOF and/or the Salvage Convention, seeking to re-apportion their liability for an enhanced award under Article 13 of the Salvage Convention compensating salvors for services undertaken to minimise damage to the environment. MPU consider that this is a benefit for liability insurers and should be borne therefore by them. Well we have a few words to say in response to this, which I'll come on to in just a few minutes.

ISU proposal for Environmental Salvage

So, with this background in mind, we now come to the salvors' proposal for a separate award for the steps they take to prevent damage to the environment, the so-called environmental salvage award.

This has essentially two elements: the first is the Article 13 award which, under the proposal, would continue with one difference, the provision providing for enhancement for steps taken to prevent pollution would be deleted. Instead, the Environmental salvage award would step in and reward salvors for such actions and this would be calculated by reference to the relevant pollution liability convention such as CLC, HNSC, and if it concerned damage from bunkers, by reference to the LLMC.

Shipowners have considered the proposal carefully and as far as we can see, this would alter the basis of salvage operations. The prime objective would no longer be to save property. The basis of the award would be the amount of pollution that salvors prevented. This in itself would be based on a hypothetical assessment of the damage that has been prevented.

It hardly needs saying that this would entail a difficult and speculative enquiry into what damage might have occurred had pollution resulted from the casualty. There is moreover no guidance on what an appropriate award amount would be in any given incident.

Salvors say that this assessment need be no different under what is already undertaken with the enhancement assessment under Article 13.

There is however a world of a difference between deciding the level of enhancement and the level of a wholly separate award based on what outcome might have occurred if salvors had not taken preventative action. This would raise the bar significantly and the increased sums at stake would inevitably result in contentious expert evidence and speculative theorising. This would no doubt result in more litigation and serve no-one's interests. It is why Bryce, upon reflecting on similar discussions arising from the proposal for "liability salvage" in the eighties concluded ultimately that it is appropriate for such concerns to be regarded as an enhancement and not independently.

Then we come to the question of who would pay for the environmental salvage award?

Assuming that the difficult questions just now mentioned were able to be settled, the ISU originally were of the view that that the cost of an award should be borne by the "ultimate beneficiary" of the pollution prevention services provided.

This is an interesting concept – the "ultimate beneficiary". Quite clearly, in the broadest sense, it would encompass governments of coastal states and the general public as well as cargo owners, shipowners and third party liability insurers. Indeed, the ISU recognised this initially and suggested that the cost of an environmental award should be borne by all the beneficiaries and not solely by shipowners and their insurers.

Salvors now however refer only to shipowners or more accurately, the shipowners' third party liability insurers, as being the "beneficiary" through the avoidance of third party liabilities. Salvors do not take account that governments have recognised that there is a shared responsibility, by governments, by shipowners, by cargo and by the general public.

They have done this through the mechanisms created in the CLC liability Conventions (including the Fund Convention) and the HNS Fund Convention. The Funds provide for additional compensation which is contributed to by cargo interests, once the shipowners' liability has reached the agreed limits.

By attributing liability on to cargo interests, the governments explicitly recognise cargo's responsibility for the environment. Where these limits are insufficient, the claimants receive reduced compensation, with the governments usually forsaking their portion of compensation in order for individual claimants to receive higher amount of compensation. Thus, in answering the question, "who benefits?", we submit: all those involved in the common adventure. If salvors' intervention resulted in a prevention of pollution, it would mean not only that shipowners' liability is reduced but also cargo interests through the likelihood that the claims will not be high enough to hit the relevant Funds.

Dealing with salvors' claim that more funding would encourage them to invest in more and better equipment, I should just remind them of what was said in this respect when a similar proposal was raised some years ago. This was in relation to "liability salvage" made in 1989, by Professor Selvig (CMI) following the Amoco Cadiz casualty. This proposal was rejected at that time and the governments proceeded with the Special Compensation scheme in Article 14. As Lord Mustill explained succinctly later in the "Nagasaki Spirit" (1997), it was "agreed that the Salvage Convention should not create a new and distinct category of environmental salvage, which would finance professional salvors to keep their vessels and equipment in readiness for the purpose of preventing damage to the environment. The primary purpose of "salvage operations" continues to be to assist a vessel in distress, for which the primary incentive is, as ever, a traditional salvage reward. The prevention of damage to the environment is an incidental benefit of some salvage operations. While the international community agreed the incidental benefit conferred by the salvor deserved financial recognition by way of special compensation, it was not agreed that it justified a free-standing reward."

The approach taken in the Salvage Convention is reinforced in subsequent international conventions (OPRC and OPRC-HNS) and national laws. Governments are not asking the salvage industry to build up capacities for preventing damage to the environment. Rather, they accept that this is a task for governments as such. In Europe for example, EMSA has been entrusted with the task of pollution response, supplementing the resources and arrangements that have already been set up at national or regional levels. These structures are recognised as making a significant contribution to the continual improvement of preparing for and responding to marine pollution. EMSA is currently completing the network of stand-by availability contracts for at-sea oil recovery services and having the arrangements fully operational.

Moreover, the basis initially proposed by the ISU for assessment of environmental salvage awards - "threatened damage to the environment" - is very broad, and could be established in all salvage operations given the presence of bunkers on all ships. It would be difficult to quantify an environmental salvage award, and any method of assessment based on the extent to which a salvor had prevented or minimised damage to the environment and the "resultant benefit conferred" would inevitably be hypothetical. Reference to the shipowners' liability under the various limitation and pollution liability conventions is not appropriate. Taken to its logical conclusion, the proposal would mean that shipowners and cargo with the highest environmental liability risk would have to pay a higher environmental salvage award than those with a lower risk even though the actual salvage operations in preventing damage to the environment had been the same.

Conclusion

Reviving the concept of environmental salvage would necessitate unravelling the complex compromises agreed in the Salvage Convention. It might also impact on other international conventions. MPU's proposal on the other hand would ignore the important principle of shared responsibility for environmental protection. If, however, a sound case for change to the salvage industry is now made by ISU/MPU which would result in an improved salvage response at lower cost to all, shipowners and insurers are willing to consider it. Indeed, shipowners and insurers have always responded constructively to salvors' concerns on previous occasions. SCOPIC for example was agreed by the industry in 1999 in response to salvors' concerns about the interpretation of Article 14 of the Salvage Convention. SCOPIC tariff rates were increased in 2007 to salvors' satisfaction and are about the increased again. As has been noted already, Salvors have confirmed their continuing satisfaction with this scheme.

The present law of salvage works in that it provides salvors with the potential to earn an award for saving property and contains a mechanism for providing an incentive to respond to pollution prevention when otherwise they might not earn an award. It works because all parties to the adventure contribute to the risk of a possible casualty and loss of property. It works because it reflects the principle that all parties to the adventure and governments are responsible for the protection of the environment.

Thank you.

ENVIRONMENTAL AWARDS HOW THEY COULD BE ACHIEVED

ARCHIE BISHOP

Todd has explained why the salvage industry feels change is necessary and I am scheduled to explain how it could be done. However, before I do so I would like to first address a related issue. Some Associations have said when replying to the questionnaire of the IWG, that they do not want to endanger the Montreal Compromise and have given this as a reason to retain the status quo. When this was discussed in a meeting with industry, called by our Chairman, in London in May this year, it quickly became apparent that many were confused as to exactly what the Montreal Compromise was so, perhaps I can start by saying what I believe it was and leave it to any of our older hands present today to later correct me if they feel I have it wrong.

From the records it would appear that the debate that led up to Montreal began with the report of the Chairman of the IWG, Professor Selvig, which, in effect, recommended liability salvage. This alarmed the liability insurers, the P&I Clubs, who were vehemently opposed to it and at the Conference a compromise between industry was struck - the current Article 14, which in essence does not reward salvors for protecting the environment but, when ever there is a threat of damage to the environment, ameliorates the harsh no cure no pay regime of traditional salvage by ensuring they at least recover there expenses. In short, a safety net.

Now, the question arises, 'should this compromise continue today?'. I would suggest not for the following reasons.

- It was made some 30 years ago and surely must be capable of being reviewed in the light of changing circumstances. It cannot have been intended to be binding for ever!
- As Todd has explained, the circumstances are very different today from what they were in 1980. Environmental issues, while important then are even more important today and play a far larger part in today's salvage operation than they did 30 years ago.
- It has already been found wanting. So much so that in LOF cases, industry has abandoned Article 14 and replaced it with SCOPIC.

- The salvage industry, one of the principle parties to the compromise, is no longer comfortable with it and wishes to re examine it.

So please, don't let's bury the problem on the basis that it might disturb a compromise made some thirty years ago in different circumstances. Lets examine the issues with a fresh mind and with the benefit of our intervening experience.

How change could be achieved

As you will have appreciated from what Todd has said, whilst there are other aspects of the Convention which should perhaps be reviewed, the main thrust of the salvors discontent with the present system focus on the way they are rewarded for protecting the environment. The ISU suggests replacing the current safety net of Article 14 with an environmental award which should be made in addition to the traditional award against ship and cargo. How could this be achieved. I suggest it could be done fairly simply by amending just three of the Articles of the Convention. I will deal with each separately. As you will see I have adopted the current Convention wording as much as possible. The current wording is in blue and the proposed amendment in red

Revise Article 1 (d) to read:

- d) “Damage to the environment” means substantial physical damage to human health or to marine life or resources ~~in coastal or inland waters or areas adjacent thereto~~, caused by pollution, contamination, fire, explosion or similar major incidents.

You will see that we propose to simply remove the geographical restriction from the current definition. The IWG in its note accompanying the questionnaire to member Associations, pointed out that all subsequent Conventions such as the 1992 Protocol, The HNS Convention and the Bunker Convention all refer to the economic zone and suggested this might be more applicable. The vast majority of responses to the questionnaire in effect agreed this would be more appropriate. Indeed I do not recall anyone who dissented.

Whilst a new limit of the economic zone would be more acceptable, I would venture to suggest that no geographical limit is needed at all. Under the definition, the damage has to be ‘substantial’. What may be substantial in one area may not be in another. If for instance a ton of oil were to escape in the River Plate it would undoubtedly be considered substantial. But if the same quantity were to escape in the middle of the South Atlantic, I doubt if anyone would consider it was. The ISU feels any informed tribunal would be quite capable of making up its mind in the light of all the circumstances and in the interest of simplicity sees no purpose in imposing any geographical limit.

Revise Article 13

Very little change is in fact required save, as we shall see, for the removal of 13.1 (b) which will be incorporated into the new Article 14.

13.1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- (a) the salvaged value of the vessel and other property;
- ~~(b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;~~
- (b) the measure of success obtained by the salvor;
- (c) the nature and degree of the danger;
- (d) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (e) the time used and expenses and losses incurred by the salvors;
- (f) the risk of liability and other risks run by the salvors or their equipment;
- (g) the promptness of the services rendered;
- (h) the availability and use of vessels or other equipment intended for salvage operations;
- (i) the state of readiness and efficiency of the salvor's equipment and the value thereof.
- (j) Any award under the revised Article 14.

13.2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to the right of recourse of this interest against other interests for their respective shares. Nothing in this article shall prevent any right of defence.

13.3. The rewards, exclusive of interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

13.4 For the avoidance of doubt no account shall be taken under this article of the skill and effort of the salvor in preventing or minimising damage to the environment.

The new 13(1)(j) and 13.4 are not really necessary and are only inserted for clarity of intent.

Revised Article 14

It is this Article that needs the most amendment. It was extensively examined in numerous LOF arbitrations between 1990 and 1999 and carefully examined by the House of Lords in the "Nagasaki Spirit". Industry found it uncertain in outcome, cumbersome to operate and expensive to

Environmental awards – How they could be achieved, by Archie Bishop

implement. It was replaced in LOF cases by SCOPIC but is still the law in 59 countries. The proposal of the ISU is that it be struck out completely and replaced with the following :

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its bunkers or its cargo threatened damage to the environment he shall in addition to the reward to which he may be entitled under Article 13, be entitled to an environmental award. The environmental award shall be fixed with a view to encouraging the prevention and minimisation of damage to the environment whilst carrying out salvage operations, taking into account the following criteria without regard to the order in which they are presented below.

It will be noted that an tribunal could make an environmental award whenever there is a ‘threat of damage to the environment’. The salvor does not have to actually prevent damage to the environment. This is the position under the existing Art. 14.1. The only difference is that under the existing Article the recovery is limited to expenses as defined in the convention whereas here, as we shall see, the recovery is left entirely to the discretion of the tribunal.

- (a) any reward made under the revised Article 13
- (b) the criteria set out in the revised Article 13.1(b) (c) (d) (e) (f) (g) (h) and (i)
- (c) the extent to which the salvor has prevented or minimised damage to the environment and the resultant benefit conferred.

The criteria basically emulate Article 13 save for (c) which gives the tribunal the power to take into account the degree of success in preventing damage and the benefit thereby conferred. So, if there was a threat of pollution in waters that would impose a liability on the owner, the award would be more than if it had been in waters which did not impose such a liability, for the benefit conferred would be that much greater.

14.2 “An environmental award shall not exceed the amount of the ship owner’s limitation fund under the CLC 1992, the HNS Convention 1996, the Bunker Convention 2001, or the 1996 LLMC Protocol or their respective successors, whichever may be appropriate to the circumstances of the case.”

There has to be a cap to any award and the cap proposed under 14.2 only looks to the respective conventions for the purpose of establishing the amount of the applicable cap. Aside from establishing the amount of the appropriate cap these conventions have no relevance to an environmental award.

14.3. For the avoidance of doubt, an environmental award shall be paid in addition to any liability the shipowner may have for damage caused to other parties,

This is an important provision for salvors for they cannot be put in the position of competing with third party claimants and the inevitable delays that

result. In the vast majority of cases its not likely to be relevant to the owner for if a limitation fund is relevant, the salvor is not likely to have been very successful in preventing damage and entitled to an environmental award.

14.4 Any environmental award shall be paid by the shipowners.

The liability for an environmental award is placed on the ship owner, rather than the cargo, as it is he who is liable for any pollution under modern Conventions and Laws.

14.5 If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any environmental award due under this article.

14.6 Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

It will be noted that an environmental award is left entirely to the discretion of the tribunal. Experience over the last 100 years has shown that an informed tribunal is quite capable of weighing up the relevant factors set out in Article 13 and making a fair and just award which satisfies industry. Lloyds open form has nearly a hundred cases dealt with every year - many of enormous proportions. It is a tried and tested system. There is absolutely no reason why a tribunal cannot do the same when assessing an environmental award. The only difference is, instead of examining the danger of damage or loss to ship and cargo, it will have to examine the danger of damage to the environment.

The London Arbitrators will tell you that they already take into account the potential liability from which ship and cargo are saved. Such potential liability does not have to be proven to the last dollar. It is sufficient to know of the risk and to weigh in the balance the degree of that risk. It will be the same for an environmental award. A threat will be sufficient for an award to be made but clearly the degree of that threat and the likely consequences will have a bearing on the amount that is awarded. That is for the tribunal.

As Todd has said, salvors do not expect to be paid unless there is a benefit conferred and they fully expect an environmental award to be commensurate with that benefit. They do not expect anything unless it has been earned and are happy for an appropriate tribunal to make the judgement of what is fair and reasonable.

Finally I have heard it said that IMO will not be interested in reviewing a convention and is to busy to consider revising this one. In answer I would say,

1. Firstly - Surely that's for IMO to decide not us. Conventions and amendments to them, are often dictated by events. Would it not be better to have a well thought out draft sitting on the bookshelf ready to be debated when the need arises rather than to begin the lengthy process afresh.
2. Secondly - The amendments proposed are not lengthy. They could be dealt with by way of a Protocol in only a few pages. If properly prepared by CMI it would not take an enormous amount of time for IMO to enact.

Ladies and Gentlemen, thank you.

FAIR REWARD FOR PROTECTING THE ENVIRONMENT – THE SALVOR'S PERSPECTIVE

TODD BUSCH¹

Introduction

Ladies and gentlemen, thank you for giving the International Salvage Union the opportunity to speak at your meeting. It is a pleasure for me to be able to share with you our members' thoughts on the important issue of ensuring a fair reward for protecting the environment.

Firstly, my credentials. Members of the International Salvage Union are involved in almost every salvage operation that take place in the world today. Last year they conducted well over 240 such operations. They are also involved in wreck removal operations which are fewer in number but provide a similar income.

In 2008, the salvage income world wide of all members was just over \$250 million and that of wreck removal just under \$300 million. Today we are only concerned with the salvage operations. They are carried out on a number of different forms of contract and are subject to different laws though all are subject to the provisions of the Salvage Convention of 1989. Approximately one third of those salvage operations are carried out under the terms of Lloyds Open Form. From these figures it will be seen it is not a huge industry but it is an important one in terms of international emergency response and the protection of the marine environment.

The principal and stated objective of the ISU is to promote the saving of life and salvaging of property in danger at sea and while doing so, to prevent or minimize damage to the environment.

Lack of reward for environmental protection

ISU has been concerned for a number of years that its members are not always fairly rewarded for the benefit they confer in protecting the

¹ President of the International Salvage Union, Senior Vice President, Titan Salvage/Crowley Maritime, USA.

environment. In recent years we have expressed these concerns to the shipowners and their insurers and suggested appropriate modification to the LOF contract to achieve a fairer mechanism to reward salvors for their efforts in protecting the environment. Regrettably, whilst amicable, those discussions have not led to any form of agreement nor even discussion of the proposals we have made. The shipowners and their liability insurers have made it quite clear that they do not see any need to change the current system and are unwilling to talk further about it.

For these reasons we turn to the CMI for help and my purpose here is to give you a sense of why salvors feel there is need for change.

Let me say straight away that we recognise that salvors are in many cases rewarded for protecting the environment by virtue of the Salvage Convention's Article 13.1 (b). However, all too often the tribunal is unable to give full effect to this provision because of the low value of the salvaged property. Cases that give rise to a material threat to the environment are often of low value compared to the cost and effort involved and it is in these cases that we feel inadequately rewarded. In such cases Article 14 (subsequently replaced by SCOPIC - which has its own problems) ameliorated the problem by providing compensation so salvors were not "out of pocket" but it has always been a "safety net" rather than a method of remuneration.

SCOPIC (which only applies to Lloyd's Open Form cases) is the same – a safety net.

Statistically, SCOPIC is applicable in 25% of all LOF cases so, in 25% of cases, salvors are receiving just the 'bare minimum'. In other cases the effect will diminish as values rise, until the value is high enough to fairly reward the salvor for what he has actually done. The break-even point is uncertain but it could be as much as 50% of all cases. It is the injustice of being inadequately paid for the benefit conferred that we seek to correct.

We recognize that the introduction of the SCOPIC Clause substantially improved the mechanism of assessing 'special compensation', as compared to the 1989 Salvage Convention's Article 14, in LOF cases. But I emphasize, SCOPIC, like Article 14 is a method of compensation when an award to cover cost cannot be made. It is not a method of remuneration which is what we seek. Salvors would not be in the salvage business if their remuneration was restricted to an Article 14 or SCOPIC award.

The three principal reasons for change

There are three principle reasons why salvors feel there should be change. I will first summarise them and deal with each in a little more detail.

Firstly, much has changed since the Salvage Convention was first drafted in 1981. Environmental issues now dominate every salvage case and what may have been a satisfactory "encouragement" then is no longer so

today. Further, there is more risk to the salvor from tougher regimes which can criminalize the actions of well-meaning salvors.

Secondly, while salvors always work to protect the environment whilst carrying out salvage operations, they are not fully rewarded for the benefit they confer. They are rewarded for saving the ship and cargo, but not the environment.

Thirdly, salvors and marine property insurers believe it is not fair that the traditional salvage reward that currently, but inadequately, reflects the salvors' efforts in protecting the environment is wholly paid by the ship and cargo owners and their insurers without any contribution from the liability insurers, who cover the shipowners' exposure to claims for pollution and environmental damage.

I shall now examine each reason in a little more detail.

1. There has been an enormous change in practical salvage since 1979 when consideration was first given to ways of encouraging the salvage industry to go to the assistance of ships which threatened damage to the environment. The remedies provided in the Salvage Convention may have been sufficient when they were first proposed nearly 30 years ago but environmental issues have increased in importance year by year making further change necessary. The environment is now relevant in every case and enormous regulatory control has been imposed often giving inexperienced local officials the power to determine precisely what work is done.

Thirty years ago the main concern was oil cargoes. But it is now recognised that other pollutants can be equally, if not more, damaging. Regulation and legislation have expanded to deal with other pollutants. There are no ships which do not carry pollutants in one form or another and there is therefore hardly a casualty in which environmental considerations are not relevant. Further, potential liabilities do not stop at pollutants.

It is now quite common for claims to be brought in respect of grounding damage to coral reefs. Changing public environmental concerns now, effectively, dictate how a salvage operation is to be carried out and have to be the very first consideration of any salvor.

The ever increasing concern of the wider public and government agencies about the environment and the fear of it being damaged has also made a material difference to the risks and liabilities of the salvor. These increase as each year goes by. In their anxiety to curb pollution of the sea, governments are legislating to not only increase potential civil liabilities but create potential criminal liability.

Salvors have always accepted that they have liability for their negligence during any salvage operations, but they have also had the protection of 'responder immunity'. However the Bunker Convention of 2001 deliberately removed that protection opening up the salvor to potential third party claims. Although there may be a good defence it is highly likely that the salvor and

his personnel will be drawn into expensive, time consuming litigation subject to the vagaries of a variety of jurisdictions.

As an example of this scatter gun approach to litigation, my company has recently been dragged into a third party claim for damage to a coral reef upon which a ship had grounded. The ship owner was sued and as part of his defence he alleged we had been negligent and caused damage to the reef whilst refloating the ship. We are now tied up in expensive time consuming litigation subject to a jurisdiction on which we had no choice.

Aside from civil liability the salvor is increasingly exposed to potential criminal liability. For example, in the United Kingdom, the Water Resources Act imposes strict criminal liability on any one whose act or omission was the cause of the pollution. It does not have to be the sole cause or even the main cause. Any contributing cause is sufficient. For example, if adverse weather during a salvage operation were to cause a hose in a ship to ship fuel transfer operation to break, with resultant pollution, the salvor could be criminally liable under the Act. Representations by salvors gained an undertaking that this regime would be reviewed and appropriate corrective legislation drafted. The review has taken place but revised legislation has not been introduced.

The recent EU Ship Source Pollution Directive requires all EU States to impose criminal sanctions for all pollution caused by 'serious negligence'. The Canadian C-15 Bill has a similar effect. Salvors will therefore be open to prosecution whenever they save a ship within 200 miles of the coastline if there is a leakage of a pollutant and it is suspected they were responsible. No doubt other nations will follow suit.

Aside from new legislation, there also seems to be an increasing tendency towards unjustified political detentions of seafarers. In the case of the "*Tasman Spirit*", the salvage master, who did not arrive until after the leakage, was detained for 9 months and the vessel chartered by the salvors to offload the oil from the ship arrested.

The potential civil and criminal liabilities of a salvor are certainly very different from what they were in the 1980s when the Salvage Convention was being developed and are a definite disincentive to the salvor to become involved in other people's problems. If salvors are to put their heads in a potential noose the rewards should take into account these risks.

2. In many shipping casualties where a coastal state is involved it is frequently a requirement that the bunker fuel is removed from the casualty by the salvor before they are allowed to commence property salvage operations. Even when salvors feel it is an unnecessary precaution. There are few cases today where there is not a 'threat of damage to the environment'.

That environmental concerns are uppermost is well illustrated by the case of the "*Prestige*". The refusal to offer a place of refuge to the "*Prestige*" may have been understandable to the authorities at that time, but within the industry it is commonly accepted that had it been given, this ship and much

of her cargo could have been salvaged, as well as reducing the environmental disaster that occurred.

It is also accepted that the resultant salvage award under the existing regime would probably have been in the region of \$10 to \$12 million; that such an award would probably have been paid out of the salvaged property fund without the need to dig into the safety net of the SCOPIC clause; that such cargo oil remaining onboard would have been contained; and that the cost of the cleaning up of the spill arising from the initial casualty would have been in the region of \$40 to \$50 million.

In the event, the salvors were unable to salvage the ship and cargo because a place of refuge was denied with the result that the ship finally sank giving rise to claims estimated to be in the region of \$1 billion.

Had the ship and cargo been salvaged, claims of up to \$1 billion would have been avoided but how much would the salvor have received for protecting the environment under the present regime? An enhanced award, but one capped by the salvaged value of the ship and cargo. Very little in comparison to the benefit conferred.

Despite the lack of a proper reward for the benefits conferred by protecting the environment, the salvage industry currently does much to benefit it. The *Prestige* lost some 70,000 tons of oil, the *Erika* a similar amount, and the *Exxon Valdez* lost some 37,000 tons. A total of 180,000 tons which resulted in claims of about \$5 billion. I understand that the US Government estimates that 700,000 tons of oil were lost in the Gulf of Mexico earlier this year. BP has already had to pledge \$20 billion – and the meter is still ticking.

In contrast, during 2009 alone, ISU members salvaged 1,022,730 tons of pollutants and in the last 15 years have salvaged nearly 16 million tons of pollutants, some of which might otherwise have polluted the sea. Of course not all that tonnage of pollutants would have been at the same degree of risk but what would have happened had only a small proportion not been salvaged?

The salvage industry has done well to cope with the changing situation as is illustrated by the results of the ISU annual pollutants salvaged survey, just mentioned. But I suggest that is despite a lack of financial incentive rather than because of it.

If the ship and cargo are of little financial value, or even valueless, the salvor (if a LOF is signed), will hopefully have the benefit of the SCOPIC Clause. This operates very well, but it is tariff based, and does not have an adequate reward mechanism for the salvor's work to prevent damage to the environment. As salvors are usually the first on the scene of any casualty, this state of affairs does not seem sensible. A change in the law to provide the possibility of a reward for protecting the environment would provide additional encouragement for the salvor.

3. As mentioned earlier, it is fair to note that when discussing the incentives given by the Salvage Convention, salvors' efforts in protecting the environment are currently remunerated, to a degree, as it is an element taken into account in assessing an award under Article 13. However, the reward under Article 13 is paid by ship and cargo owners and their respective underwriters pro rata to value rather than by the ship owner and his liability underwriters who normally bear the brunt of pollution claims and therefore benefit from the work done. This is plainly unjust.

How can change be effected?

The International Salvage Union has suggested that environmental awards which recognise the environmental benefit conferred by salvors could be achieved by amending Articles 1, 13 and 14 of the Salvage Convention. ISU has worked with others to produce drafts of the amendments. And the resultant proposals will be the subject of Archie Bishop's talk in a few minutes time, so I will say no more other than to endorse the proposal which we feel will result in a more just and fair regime. I would ask you particularly to note that we do not ask for any award unless a benefit has been conferred and we entirely accept that it should be in proportion to that benefit. Further, we are content for the assessment as to a fair award, to be made by the appropriate tribunal, guided by principles that have worked well for many centuries in many countries.

Conclusion

Here I have given the salvors' "case for change". We believe it has the merit of being both persuasive and fair given the way concern about the environment has properly increased since the original work on the Salvage Convention began some thirty years ago. We also believe there is a sensible way to amend the existing framework to enable the change. We know that not all parties agree with our position and we stand ready to work cooperatively with the Comité and other stakeholders to continue to discuss and to work on this important matter. Being proactive on further protection of the environment will benefit everyone.

Thank you.

AMENDING THE SALVAGE CONVENTION 1989 – THE INTERNATIONAL GROUP OF P&I CLUBS' VIEW

HUGH HURST¹

Good morning ladies and gentlemen.

I am grateful for the opportunity of speaking on behalf of the International Group on the topic “Review of the Salvage Law – Is it working? Does it protect the Environment?”

Introduction

By way of background, the International Group is comprised of 13 principal not-for-profit mutual protection in indemnity Clubs (the Clubs), which between them provide third party liability insurance for approximately 90% of the world's ocean-going tonnage and approximately 95% of the world's ocean-going tanker fleet. The Clubs are domiciled in a number of different jurisdictions Bermuda, Japan, Luxembourg, Norway, Sweden, UK and the US. The Clubs are true mutual insurers in that the shipowner and charterer members (members) own and run the Clubs and are accordingly both insurer and insured.

The Group Clubs, individually, provide cover to their members for claims of up to US\$ 8 million dollars. Between US\$ 8 million and approximately US\$ 6 billion, other than in respect of oil pollution and passenger and crew claims which are limited to US\$ 1 billion and US\$ 3 billion respectively, the Clubs ‘pool’ that is share the cost of claims falling on their members. The Clubs collectively purchase reinsurance from the commercial market for claims of between US\$ 50 million and US\$ 2.05 billion.

Club membership is drawn from the totality of the ship owning community, including of course salvors. I imagine that the great majority of salvors here today have tugs and other vessels entered with Group Clubs.

I should perhaps make it very clear at this stage that the Group and the ship-owning community have every interest in and are committed to maintaining a strong, vibrant and viable salvage industry. This is reflected in the efforts that shipowners and the Clubs have gone to over the years to meet salvors concerns, in particular in relation to remuneration from salvage and

salvage related activities. The most recent example of such commitment is the development in conjunction with the ISU and marine property underwriters, of the Special Compensation P&I Clause (SCOPIC) in 1999.

Brief History of the Convention

Current salvage law is enshrined in the International Convention on Salvage 1989 (the Convention), which was finalised after some ten years of negotiation involving both industry and states (the latter in the form of the IMO Legal Committee), as a direct result of the ‘*Torrey Canyon*’ and ‘*Amoco Cadiz*’ incidents both of which had resulted in substantial pollution and consequent damage to the environment. It was recognised by both industry and states that the Convention should provide a sufficient incentive to salvors to always respond to incidents involving a threat to the environment to reflect society’s increased concern in protecting the environment, allied to the recognition that efficient and timely salvage operations could be a major factor in averting environmental damage.

During the course of the negotiations leading to the formulation of a draft Convention the CMI advocated that salvage law be extended to embrace the concept of ‘liability salvage’ that is a reward payable for minimising or preventing damage to the environment irrespective of whether property had been salvaged. The idea was not new as it had been proposed and rejected during the negotiations which led to LOF 1980. LOF 1980 did however for the first time introduce an exception to the ‘no cure, no pay’ principle since it provided that a salvor would have a ‘safety net’ and receive payment for his reasonable expenses plus an uplift not exceeding 15%, for salvage services rendered to a tanker laden or partially laden with an oil cargo whether or not successful, if such payment exceeded the conventional LOF ‘no cure no pay’ salvage award.

The concept in the context of what was then a draft Convention was considered by the CMI at the Conference held in Montreal in 1981, and again rejected in favour of a compromise solution whereby a conventional salvage award would be enhanced to reflect the skill and efforts that the salvor had expended in preventing or minimizing damage to the environment (Article 13 1 (b)) but allied to broadening the approach adopted under LOF 1980 by not limiting it to tankers and in addition providing for more generous remuneration to salvors (Article 14). This compromise solution was dubbed ‘the Montreal Compromise’.

Article 14 provides that a salvor is entitled to ‘special compensation’ if he carries out salvage operations to any vessel which threatens damage to the environment but fails to earn an award under Art 13 at least equivalent to the special compensation as calculated under Article 14, that is the expenses incurred by the salvor but subject to an uplift of between 30-100%.

The Montreal Compromise was a carefully crafted solution reached between shipowners, salvors and property underwriters, which was subsequently endorsed by states by way of its adoption into the Convention.

The purpose of briefly referring to the events leading up to the formulation of the Convention is to demonstrate that it was developed to meet industry and states' concerns both in relation to protecting the environment and appropriately rewarding salvors for doing so and that the provisions of Art 13 and 14 of the Convention were designed to achieve this and resulted from a carefully constructed compromise agreement reached between shipowners, salvors and property underwriters.

The Convention is perhaps one of the most successful of the IMO Conventions developed by the Legal Committee. It was adopted by the Assembly in 1989 and came into force in 1995 a mere six years later. Apart from CLC 1969 I do not believe that any convention has been adopted with such alacrity, which includes the Bunker Convention 2001. Moreover 59 states, including the great majority of the major trading nations such as the US, China, Russia and many of the EU member states have ratified the Convention.

SCOPIC

Although the Convention did not come into force until 1995 it had been contractually incorporated into LOF 1990 and 1995, and accordingly most contractual salvages had been subject to its provisions for some time. Two major issues emerged in relation to the application of the Convention from the salvors point of view. Firstly the salvor had to prove that he had prevented or minimised damage to the environment or threatened damage to the environment. Secondly following the H/L judgment in *Semco Salvage & Marine Pte Ltd –v- Lancer Navigation (the Nagasaki Spirit)* in 1997, it had been determined that salvors expenses as defined under Article 14 did not include a profit element.

Salvors approached shipowners and the Clubs with a view to rectifying what they saw as unintended consequences of the operation of Article 14, which were disadvantageous to them. In a further spirit of compromise shipowners and the Clubs agreed to consider salvors concerns with a view to agreeing a simplified framework for special compensation, which would promote a fast response to casualties but reduce the potential for legal disputes.

After considerable negotiation between shipowners, salvors, the Group and property underwriters the Special Compensation P&I Clause (SCOPIC) was finalised in 1999 as an alternative to Article 14 for dealing with the issue of special compensation and formulated in such a way that it could be incorporated into LOF.

SCOPIC introduced mutual advantages to all parties involved in salvage.

The main advantages accruing to salvors are that:

- (1) salvors no longer have to prove environmental threat and to overcome geographical restriction defences. A salvor can earn remuneration no matter where the incident occurs, whether in the middle of the ocean or close to shore. Moreover the application of SCOPIC is not dependant upon the degree of threat to the environment;
- (2) salvors are paid profitable rates for tugs, equipment and personnel deployed. The rates were deliberately intended from the outset to be and are generous;
- (3) salvors cash flow problems have been eased because of the prompt mode of payment of SCOPIC remuneration;
- (4) security for salvors is more certain.

With the advent of SCOPIC in 1999, salvors reliance on Article 14 for a right to special compensation for preventing or minimising damage or a threat of damage to the environment has considerably diminished, which is a measure of SCOPIC's success.

It would also seem that revenue derived from SCOPIC is greater than remuneration earned under Article 14. From statistics provided by salvors it would seem that revenue under Art 14 between 1991-2000 averaged \$8m p.a. whilst revenue from SCOPIC between 1999-2008 averaged \$36m p.a.

Moreover SCOPIC rates are not static. In 2007 following negotiations between the Group, ICS, the ISU and property underwriters, the tariff rates were increased for personnel and equipment by 15% and for tugs by 25%. In addition it was agreed in 2007 that the rates would be again reviewed in 2010. Negotiations on rates have taken place during the course of 2010. Recommendations have been made by the SCOPIC Committee, composed of representatives from ICS, ISU, the Group and property underwriters, that the rates should be increased by 10% across the board, that is for personnel, equipment and tugs. These recommendations are being considered by the parent bodies of each organisation.

SCOPIC was specifically developed to address salvors' concerns in relation to the uncertainty resulting from the application and interpretation of Art 14, with substantial input from them and with their agreement. It provides salvors with the certainty of a reasonable and profitable reward for preventing or minimising damage to the environment, which on current evidence they clearly prefer.

All parties engaged in salvage have acknowledged the effectiveness of SCOPIC. Indeed in the September 2007 issue of *Salvage World*, the then president of the ISU stated:

“The importance of SCOPIC is that it provides the all-important financial incentive when salvors are confronted with cases which might

otherwise lack financial viability. The fact that the international P&I community has agreed to an increase in the SCOPIC tariff confirms this system's valuable role in preventing damage to the marine environment. The decision also contributes to maintenance of high levels of salvage service".

Recent History

In 2006 the ISU together with property underwriters once again raised the issue of liability salvage, but under a different name 'environmental salvage'. With a view to ensuring full consideration of the issue, salvors and property underwriters requested that the Lloyd's Salvage Group (LSG), the liaison group on which salvors, shipowners, property underwriters and the Group are represented, establish a working group to look into the concept of environmental salvage. Shipowners and the Group felt that the issue of liability / environmental salvage had been satisfactorily resolved by way of the Montreal Compromise and the development of SCOPIC. Nevertheless in their usual spirit of co-operation and in order to accommodate salvors' and property underwriters' wishes, they agreed to the establishment of and to participate in an LSG Working Group to consider the concept. The working group, comprising the ISU, ICS, property underwriters and the Group, was established in 2007 and met on three occasions.

The ISU initially put forward the concept of environmental salvage - the introduction of an award for minimising or preventing environmental damage separate and distinct from that for salvaging property - on the grounds that the salvage industry was financially constrained and required additional funding if it was to survive in a viable form. The Group and ICS agreed to consider the ISU's assertion subject to the provision of financial information and statistics that would substantiate it. The ISU were initially unable to provide relevant data but subsequently did so at a relatively late stage in the discussions. The data made it clear that revenue from LOF, SCOPIC and related services (e.g. wreck removal) had and was continuing to increase substantially, from some \$150 million in 1999 to \$311 million in 2005. The Group's understanding is that it has increased substantially since 2005.

The ISU then abandoned their 'impoverished' approach and sought to justify their proposal on the basis that in recent times there has been an increased focus on protection of the environment and this often takes priority over and above any operation to save property. Moreover whilst the efforts expended by salvors in protecting the environment confer a benefit on liability insurers, salvors are currently insufficiently rewarded in a way that reflects this benefit.

Property underwriters were interested in a revision of Article 13 since in their view, despite agreeing to the Montreal Compromise, it is unreasonable

that awards under Article 13.1 (b) should be enhanced by including in the criteria for assessing such awards the skill and efforts of the salvors in preventing or minimising damage to the environment. The result of this is that liability underwriters in effect benefit at property underwriters' expense.

At the third meeting of the working group held in April 2008 it was agreed that the ISU and property underwriters would formulate a proposal to put to the ICS and the Group which would meet certain criteria, in particular:

- (a) that the concept of environmental salvage would be clear in scope and effect
- (b) introducing the concept would demonstrably improve casualty response, confer a net financial benefit on those meeting the costs and represent an improvement over SCOPIC.

The proposal was put forward in February/March 2009. In essence it established a stand-alone reward for conducting salvage operations that prevented or minimised a threat of damage to the environment. The text of the proposal is set out on pages 21-23 of the Discussion Paper prepared for the IWG meeting that took place on 12/5/10.

ICS and the Group at a meeting held with the ISU on 6/7/10 advised the ISU that the proposal did not in their view meet the agreed criteria.

In light of the above chronology of events the Group was both surprised and disappointed to find that the ISU had approached the CMI in December 2008 with a request that the CMI review the Convention and that an IWG was established without first consulting other interested parties such as shipowners and the Group.

Is current salvage law working?

It has been suggested that because of the dissatisfaction with certain aspects of the operation of and the interaction between Articles 13 and 14, the Convention is flawed, does not therefore operate effectively and accordingly should be amended.

The dissatisfaction in relation to Article 13 is largely that of property underwriters for the reasons given above. However the operation of and interaction between the two articles was a part of the Montreal Compromise which was agreed to by all of the parties engaged in and paying for salvage. Nothing has substantially changed since the Compromise was finalised.

Moreover the principle of those participating in a maritime adventure sharing in all aspects of that adventure including protection of the environment are reflected in international Conventions such as the 1992 CLC/Fund Conventions and the 1996 HNS Convention and its 2010 Protocol.

It is also worth noting that where the shipowner is in breach of his contract of carriage e.g. lack of due diligence before and at the beginning of the voyage to make the vessel seaworthy, although cargo underwriters may

initially pay or be liable for their proportion of any article 13 award, they will recover this by way of recovery of or non-payment of GA expenditure.

For the reasons stated above the Group believes that the current criteria for determining an award under article 13.1, including enhancement of the award under sub-paragraph 1 (b) is entirely equitable.

So far as Article 14 is concerned it has been suggested that the development of SCOPIC indicates the shortcomings of the article and accordingly the need to amend the Convention. The UK courts interpretation of Article 14 has from a salvors view point had some unintended consequences in many salvage cases, most importantly the need for salvors to prove a threat to the environment to overcome any geographical restrictions and that rates for tugs, equipment and personnel do not include a profit element. However it is worth noting that SCOPIC is an alternative to Article 14 and salvors have an option whether or not to invoke it. Normally it seems they will do so in preference to the application of Article 14, but not on all occasions since special compensation assessed under Article 14 can be increased by up to 100% of the salvors expenses.

It should also be borne in mind that a voluntary industry agreement to supplement the efficient operation of an international convention as in the case of SCOPIC and the Salvage Convention is not unique. In 2003 a Protocol to the 1992 Fund Convention was adopted by the IMO, the Supplementary Fund Protocol, which provides for a third tier of compensation by establishing a Supplementary Fund which will respond to any one pollution incident up to 750 million SDR.

The Protocol came into force in 2005 and is financed in the same way as the 1992 Fund Convention that is by contributions levied on any party receiving crude or heavy fuel oil after sea transport in a contracting state. In 2000 when the Protocol was being formulated an IOPC working group was established to look into the issue of revising the 1992 CLC/Funds Conventions. One of the main concerns that states had was a perception that there was an imbalance between contributions to pollution incidents, made by shipowners under CLC and contributors under the Fund Convention. There were also other concerns, such as the substandard transportation of oil, the definition of ship and the issue of compulsory insurance.

The Group and ICS participated in the working group and in order to demonstrate their support for the two Conventions, the way in which they operated and interacted and their commitment to the sharing principle, offered to enter into two voluntary agreements to ensure a fair sharing of claims. These agreements are the Small Tanker Oil Pollution Indemnification Fund (STOPIA) and the Tanker Oil Pollution Indemnification Agreement (TOPIA) both of which took effect in 2006. STOPIA substitutes the limit of liability under the 1992 CLC for a tanker entered with a Group Club of not more than 29,548 gt, from SDR 4.5 million to SDR 20 million. TOPIA

provides that tanker owners entered with Group Clubs will indemnify the Supplementary Fund for 50% of the amount of any claim falling on the Supplementary Fund.

Many states decided there was no need to proceed with the revision of CLC 1992 on the basis of the offer made by shipowners / Clubs to formulate these two agreements to facilitate the operation of CLC and the Supplementary Fund Protocol, even though neither the agreements nor their underlying principles are incorporated in any convention.

As indicated above from statistics provided by the ISU, it is clear that revenue from salvage under LOF, SCOPIC and other related services has been increasing very steadily, not to say spectacularly, since 1999. The ISU is happy to accept this is the case. SCOPIC has proved itself more than a mere 'safety net' enabling a salvor to recover his expenses and possibly earn him a 'little profit' but to the contrary appears to provide a very healthy profit. That the revenues are there to finance a viable and sustainable salvage industry does not seem to the Group to be in issue.

The operation of the Convention together with the certainty provided by SCOPIC that salvors are rewarded for minimising or preventing damage to the environment, in the view of the Group clearly indicate that current salvage law is operating successfully, ensuring a viable and profitable salvage industry and protecting the environment.

Issues raised in the CMI questionnaire relating to the ISU's proposals. Would these improve Salvage law?

It was clear from the IWG meeting held on 12/5/10, that what lies at the heart of the ISU's proposals to review and amend the Convention is their desire to amend articles 13 and 14 to create a stand-alone award for preventing or minimising threatened damage to the environment during the course of salvage operations. If it were not for this no review would have been proposed.

The ISU have proposed that three Convention articles be reviewed and amended.

(a) Revised Art. 1

Under revised Article 1 it is proposed that the definition of 'damage to the environment' be amended by expanding the geographic scope from coastal or inland waters or seas adjacent thereto to any area where services are being carried out to a vessel, its bunkers or cargo. In addition, although the wording is not at all clear, it seems that it is intended that the definition should also include "a vessel her bunkers and cargo which is or may become a hazard or impediment to navigation or may reasonably be expected to cause harmful consequences to the marine environment or damage to the coastline or related interests of one or more states".

Under SCOPIC it is no longer necessary for a salvor to overcome any

geographical defence and the Group has accordingly accepted an expanded geographic scope albeit in the context of SCOPIC. It does not therefore see the need to amend the definition.

However where a vessel is a hazard or impediment to navigation it may already be sunk or stranded and accordingly a CTL / wreck. It is unclear therefore whether the proposed amendments would entitle a salvor in such circumstances to continue services under LOF. It would be strange indeed if a salvor under an amended Convention were to be put in a position where he could claim an environmental salvage reward for removing a wreck and this would be unacceptable to the Group.

Moreover determining whether a vessel may become a hazard or impediment to navigation or may reasonably be expected to harm the marine environment or damage the coastline or related interest or one or more states, would be entirely speculative, arbitrary and uncertain.

(b) Revised Art 13

The proposed amendments to delete paragraph 13 1 (b) and to introduce a new paragraph 13 (4) to reinforce such deletion, would have the effect of removing any element of sharing in the protection of the environment as between property and liability underwriters. It would also negate the Montreal Compromise and as indicated above the Group does not believe the rationale for the Montreal Compromise has altered nor has there been any substantive change in the way salvage operations are conducted.

(c) Revised Art 14

Revised Article 14 provides that the salvor, before he is entitled to any reward or remuneration, must carry out salvage operations in respect of a vessel, its bunkers or cargo that threaten damage to the environment. Subject to the addition of salvage of bunkers this section of the article is no different to the current Article 14 wording. Revised Article 14 however provides that the salvor is entitled to an environmental award rather than special compensation. The criteria for determining the award are the same as those applied in assessing an Article 13 award with the exception, needless to say, of the salvaged value of the ship and other property but with the addition of “the extent to which the salvor has prevented or minimized damage to the environment and the resultant benefit conferred”.

The ISU appear to have recognised that there should be a cap on any environmental salvage award and have proposed that this be either limited to US\$250 per gross ton of the vessel subject to a minimum tonnage of 20,000 tons or to the amount of a shipowners limitation fund under CLC 1992, HNSC, the Bunkers Convention and LLMC 1996 “whichever may be appropriate in the circumstances of the case”.

Finally Article 14.4 provides that any environmental award shall be paid for by the shipowners.

The proposals contained in revised Article 14 are an attempt to once again revive the concept of 'liability salvage' with all the problems associated with it, which caused it to be rejected on two occasions as detailed above in favour of the Montreal Compromise.

Moreover in reverting to the wording contained in current Article 14 it seems salvors will once again have to prove that there was a substantial threat of damage to the environment and the extent to which he has prevented or minimised that threat. In addition under the proposal it will be necessary in some way quantify the 'resultant benefit conferred'. This will result in the need to adduce costly expert evidence as to what constitutes a threat, its potential financial impact and the resultant benefit. As an example of the difficulties associated with quantification take a situation where an oil spill is successfully avoided in the Gulf of Mexico. It would require extensive expert evidence to attempt to determine the amount of oil that might have gone ashore and where, for instance wholly on one or other of the US and Mexican coasts or on both. If the latter would CLC to which Mexico is a party or US OPA 90 be applicable? It would also be necessary for different experts to attempt to quantify the damage that might have resulted from the spill to fisheries, tourist resorts, hoteliers and so on.

Any environmental award would inevitably be subjective, speculative and hypothetical which would lead to a lack of consistency between awards. It would also severely delay any payment to salvors unlike the position under SCOPIIC.

Overcoming these problems was one of the main reasons that the ISU participated in the development of the SCOPIIC agreement which ensures certainty of reasonable and profitable remuneration to a salvor for preventing or minimising damage to the environment together with early payment of such remuneration.

There are of course other problematic issues associated with the proposal. For instance the shipowner might not be liable for the incident e.g. if misdeclared dangerous cargo causes a major casualty and yet it is proposed that the shipowner meet any environmental award. Would and if so how would an owner's right to limit his liability or his loss of the right to limit in respect of the damage averted be taken into account in assessing the award.

The ISU recognise that it is necessary to establish an 'environmental award fund' and have proposed two methods of doing so. Both seem arbitrary and illogical. Option 1 as indicated above is based on the tonnage of the vessel with a minimum fund value of US\$5 million and a maximum fund value in the region of US\$45 million. This could result in the illogicality that the maximum fund available to a salvor who has earned an 'environmental award' in respect of a fully laden 20,000 tanker being limited to US\$5 million but the fund applicable to a 100,000 bulker having only bunkers on board amounting to US\$25 million.

Option 2 relates the cap to the owner's limitation fund under whichever of the liability/compensation Conventions or LLMC 1996 'is appropriate to the circumstances of the case'. It seems illogical to link a cap for an environmental award to an owner's limit of liability under a liability/compensation Convention. Moreover how is it intended to determine what Convention is appropriate particularly when the salvor earns an environmental award in respect of a vessel fully laden with an HNS cargo but which also has bunkers on board.

There is no indication that salvors are not engaging in salvage operations which they otherwise would, if they were entitled to a separate environmental award nor that the services they provide would be improved by virtue of such an award. There seems little doubt that they undertake operations which on an Art 13 'no cure no pay' basis may be marginal, because of the financial incentive already provided by Article 14 and SCOPIC.

The introduction of an environmental award as proposed by salvors seems to the Group to be a retrogressive and backward step and one which has in the past been rejected. It would inevitably lead to delay in payment, uncertainty and inconsistency in awards and increased legal costs, all of which difficulties are met by SCOPIC.

The Group does not believe that the ISU's proposals to amend the Convention would in any way improve the application of salvage law.

IMO

'Ownership' of the Convention is with the IMO. The Convention can therefore only be amended if the IMO Legal Committee decides to do so.

The Convention was formulated by the IMO to meet increased concerns for the protection of the environment and under the Convention both the owner and the salvor owe duties to one another to exercise due care to prevent or minimise damage to the environment. From States perspective the Convention operates very effectively and there is accordingly a satisfactory legal mechanism in place to ensure the environment is protected.

IMO Resolution A. 777 (18) provides that the Legal Committee will only entertain proposals for amending existing conventions on the basis of a 'clear and well-documented compelling need' to do so.

The Group does not believe that the Legal Committee will view the ISU's proposals as making out a case for amending the Convention or satisfying the requirements of the Resolution.

Conclusion

As will be appreciated from what has been said above shipowners and the Group believe that with SCOPIC supplementing the Convention, salvage law is working well and operates very effectively to protect the environment.

The ISU's proposed amendments to the Convention would not in the Group's view in anyway improve on current salvage law or on a practical side result in the provision of more efficient salvage services. Rather they would herald a return to an uncertain, arbitrary, subjective and costly system of remunerating salvors for preventing or minimising damage to the environment, which they rejected some years ago and which does not provide a sustainable way of ensuring funding for the salvage industry. SCOPIC which was devised after lengthy negotiations between salvors, shipowners, property underwriters and the Group is now a tried and tested system which provides certainty of a profitable reward to salvors for preventing or minimising damage to the environment.

Thank you for your attention.

THE EYE OF THE STORM

NICK SLOANE

Dear Mr. President, members of the CMI Colloquium, it is indeed an honour and privilege to be here today, both for the ISU, and for me personally.

My brief is to demonstrate to you *how salvage operations have changed* since the Convention was first drafted nearly 30 years ago.

How do you condense 30 years into 15 minutes!

I shall try to do so pictorially in the following 60 slides - but I begin by answering the question with a single word “enormously”.

Historically – salvage expertise was available wherever a tug was located – however – this expertise has diminished over the years – and now you rely on “highly trained mobile teams” to add experience to the locally available support craft & personnel.

The role of the Salvor – portable specialised equipment – fit-for-purpose – and experienced salvage teams.

With many more players involved in a maritime incident off a coast these days, the salvor has to be aware of the factors at play!

- The ships are different – very large box ships >15,000 TEU – (with to date only 3,500 TEU containers ships having been dealt with in salvage operations), problems with undeclared HNS, misquoted weights, resulting in stowage in cells/ places you can’t get at, increasing the risks to salvors etc.
- Salvors are no longer allowed to just “get on” with the job. Methods/ actions dictated by local authorities, salvage plans scrutinized for approval, etc.
- The salvage incident tests the ships crews – who on a well-found ship are the best placed people to deal with the situation – but - once the crew lose control of the situation – the salvor is brought in – sometimes only after considerable delay whilst the ship-owners’ shore-based emergency team re-look at the situation to see if they can regain control without resorting to salvage assistance.
- These ship-owners emergency response teams deal very seldom with

major incidents – and that is why suitable salvage assistance should be sought at the earliest opportunity – to provide maximum time for salvors to regain control.

- The object is to recover maximum value – whilst protecting the environment. Every case is different – and causes the vast data- base and experience factors of the salvors to be brought into play.

As may be seen from the slides – the costs of oil clean-up varies significantly from a survey taken in 2001 – from region to region. By plotting the routes taken by oil-carrying vessels – it is easy to determine the areas of highest risk!

These oil-clean-up costs have risen dramatically in the last eight years (excluding the Deep-Water Horizon) – in the USA, Far East and to a lesser extent Europe, but still remain relatively low in the “Third World Countries”, of which, unfortunately I am a citizen! The third world countries have the least prepared coastal state maritime authority’s – with even lesser ability to react effectively to a large-scale spill!

The “environment”, as we know it today - was involved 30 years ago in comparatively few cases.

Yes, the environment was all important in huge headline grabbing cases such as the “*Amoco Cadiz*” and the “*Torrey Canyon*”, but in the vast majority of cases it was an incidental issue, as in the “KATINA P” off Mozambique.

I highlight this using my first exposure to the dire challenges faced in a laden VLCC fire, and subsequent break-up and sinking, with a total loss of the 274,000 T crude-oil cargo into the “environment” - the “*Castillo de Bellver*” salvage operation in 1984.

Today the environment is all consuming. It is the most important factor in any salvage case after safety of life, and in effect dictates how the salvage operation is carried out.

- In Karachi in 2003, the *Tasman Spirit* had the misfortune to ground on entering the port shortly after high water. After being prevented to respond rapidly to the situation by the various coastal state parties involved (KPT / Customs / CBR), the salvage master and seven of the ships crew were detained after the ship broke in two – discharging over 30,000T of crude into the vast wetland areas surrounding the port. Nine months later, after the successful removal of the wreck by salvors operating under duress, the bail conditions were amended – without any charges ever having been placed – and the “*Karachi-Eight*” could go home!
- We had a case earlier this year in Mozambique – where the salvage team were incarcerated during a refloat operation of a floating-dry-dock – where the local authorities incorrectly believed that “toxic waste” was being dumped!
- Some of the challenges facing the salvage community these days are

harsh environmental conditions – especially after grounding on some unforgiving coast.

- Just getting access onto the casualty is life-threatening!
- The “*Ikan Tanda*” in 2001, an example where we had to eventually scuttle the ship outside the territorial zone – after weeks spent to successfully refloat her – due to an impasse with local coast-state authorities and the owners appointed lawyer – on guarantees!
- With many cargoes carried on container ships these days – the risk of mis-declared cargoes grows – with the potential for fire & explosions – are some of the other situations salvors find themselves in – not knowing what the full extent of the risks are, and again placing themselves in danger!
- With a growing threat from Pirates – the risk of a terrorism attack is ever there – with the intelligence known about their intended prey – far exceeding that initially given credit for, as in the case of the VLCC “*Lindburg*” off Yemen!
- Hostile environments are becoming more common for salvors – and risk assessments are constantly updated, but for what reward?
- The pollutant is no longer just oil – we have numerous pollutants in the IMDG Code cargoes – and even cargoes of pure HNS, which shall make the risk to the environment from oil seem benign!
- HazMat teams are required to be immediately available, or included in the modern salvage team – as these slides indicate – removing residues of hazardous cargo after a fire – on a heavily listing ship (>23 deg), is challenging to say the least!
- Fortunately these days – oil recovery techniques have advanced a long way from the day that we allowed 70,000T of crude to be sunk on the “*Castillo de Bellver*”
- As may be seen from these slides – oil recovery is seldom an enjoyable operation – but a necessary one to allow the salvor to proceed with the plan, and minimise the exposure to the environment!

In Conclusion

- I would like to say that few of the cases seen in these slides resulted in an *Article 13 Award*.
- The risks to the salvors is readily apparent – and the benefit to the environment is huge – but is hard to quantify!
- Salvors need all the support they can get – from the shipowners, crew, coast-state authorities – in fact all the parties involved!
- The environment has become the biggest factor in salvage – after the *safety of life!*
- Ship Salvage... is a science of vague assumptions; based on debatable

figures; from inconclusive instruments; performed with equipment of problematical accuracy; by persons of doubtful reliability – and of questionable mentality!

Mr. President – I can assure you that the desire of the *International Salvage Union* Members – and I am sure of everyone here today – is to keep the people on the beach – rather than to see this same beach covered in oil.

Thank you.

YOUNG CMI

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P&I Insurance in view of new developments in International Maritime Law by MARIJA POSPISIL	*	
The New Panama Canal: A Better Way to Go was also presented by ERIC ESPINOSA SOBARZO	*	
International Legal Regime of Offshore Structures - Environmental Concerns by VIOLETA S. RADOVICH	*	

* The above papers are available on:
<http://www.cmi2010buenosaires.com.ar/en/colloquium-documentation>

THE ROTTERDAM RULES – SOME CONTROVERSIES

STUART BEARE

It is not possible to draft a convention which contains 96 articles and updates a regime first established ninety years ago without attracting some controversy. Some provisions in the Rotterdam Rules have not appeared before in an international convention and inevitably the need for regulating these matters will be questioned. Provisions that change familiar provisions in the existing regimes will provoke questions about the need for such changes.

This morning I attempted to explain why there was a need to change the existing regimes to take account of the major changes that have taken place in the industry over the past fifty years and I highlighted some of the provisions in the Rotterdam Rules that reflect these changes. Not all of these provisions are seriously controversial, but the general criticism has been made that the Rotterdam Rules are too long and too complex. However by adopting the CMI Draft as the basis for its work, UNCITRAL Working Group III implicitly set itself the task of preparing a comprehensive instrument and the complexity of the Rotterdam Rules to a large extent reflect the complexity of the modern industry.

I shall begin by concentrating on two topics that were not the subject of detailed presentations this morning.

I mentioned **door-to-door transport** in the context of my general remarks about the “container revolution”. As I pointed out, in the container trade the carrier’s period of responsibility under the contract of carriage often extends to cover some carriage by road or rail before or after the carriage by sea. This used to be referred to as combined transport, which is not necessarily strictly door-to-door, that is, for example, from the seller’s factory to the buyer’s warehouse.

Three principal areas of controversy arose during the negotiations in Working Group III.

When the instrument being drafted by the CMI was considered at its Conference in Singapore in 2001, it was decided that it should cover the possibility that it would apply also to other forms of carriage associated with

the carriage by sea. This decision was reflected in article 4.2.1 of the CMI Draft. The UNCITRAL secretariat however considered that this was going beyond its brief and article 4.2.1 was placed in square brackets in the Preliminary Draft Instrument placed before Working Group III.

The first question, therefore, was whether the Convention should apply to door-to-door contracts at all, or whether it should be a purely maritime convention. Because many contracts in the container trade are structured on a door-to-door basis, it was felt that it would be artificial to restrict the legislative treatment of such contracts to the port-to-port carriage and in any event there was no demand from the industry for a third restricted regime. No serious argument was advanced for adopting a uniform, as opposed to a network, system, but the network system adopted is a limited system; the provisions of another convention which may prevail are those directed to carrier's liability, limitation of liability and time for suit. It was emphasised that the Convention was to be essentially maritime – maritime plus - and for the Convention to apply an international sea leg had to be included. It was suggested that this should be emphasised by referring to the ancillary or incidental nature of the land carriage, but this proved impossible to draft with any precision.

The Convention has been criticised because it does not apply when there is no international sea carriage and is therefore not fully multimodal. But this was never the intention and arguably it would have been outside Working Group III's brief to draft such a convention. Such a convention is the aspiration of many and, indeed, the United Nations Convention on International Multimodal Transport of Goods 1980 is such a convention, although it does not establish a fully uniform regime. However only eleven states have ratified it and it is not yet in force. The Rotterdam Rules do not preclude a further attempt, but experience shows that the task will be difficult.

The second area of controversy was the scope for conflict with other conventions, such as CMR, COTIF/CIM and Montreal. This problem has been dealt with in two ways. First article 26 (article 4.2.1 in the CMI Draft) refers to a hypothetical contract, so it is not necessary to look at the scope provisions of the other convention¹ with which there might possibly be a conflict. Second article 82 deals with specified potential areas of conflict where other conventions may govern carriage by sea.

These attempts to mitigate, if not wholly eliminate, the problem have been criticised on the grounds that uncertainty still remains and uncertainty will lead to increased litigation. However the object of such litigation is usually to obtain a more favourable limit of liability. It has been pointed out

¹ Article 26 does not in fact refer to "another convention"; it refers to "another international instrument" which could include an EU Regulation or Directive.

that door-to-door transport mostly involves containerised packaged goods.² Packages with a weight below about 109kg will receive more favourable treatment under the Rotterdam Rules than under the other conventions I have mentioned because article 59 provides for a limit of 875 SDR per package. Packages with a weight in excess of 109kg are exceptional. I think that lawyers may be disappointed.

The third area of controversy concerned national law. The question was whether article 26 should also provide that the relevant provisions of mandatory national law should prevail over the provisions in the Rotterdam Rules. This question had been left open by the CMI because “national law” had been placed in square brackets in article 4.2.1 in the CMI Draft. Working Group III finally decided that including national law would make for uncertainty. National laws differed from state to state, they could always be changed and they could be difficult to ascertain.

I now turn to maritime performing parties and in particular **terminal operators**. I explained this morning that the Rotterdam Rules drew a clear bright line between maritime performing parties, who perform the carrier’s obligations between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship, and are covered by the Rules, and other, non-maritime, performing parties, who are not. Professor Fujita then developed this subject in his presentation. A terminal operator falls within the definition of a “maritime performing party” and is thus jointly and severally liable with the carrier under the Rules for loss or damage insofar as the occurrence causing such loss or damage meets the requirements of article 19(1)(b). Terminal operators have no liability under the Hague, Hague-Visby and Hamburg Rules (a terminal operator is not an “actual carrier”) and they have expressed some concern at being brought within the scope of a mandatory regime.³ As there is usually no direct contract between a terminal operator and the shipper, or goods owner, the issue concerns claims by the shipper or goods owner against the terminal operator in tort. At present few such claims are made because the claimant usually has a more straightforward claim under the contract of carriage against the carrier. I doubt whether the Rotterdam Rules will change this. However if a claim is made against a terminal operator under the Rules, the terminal operator will be entitled to rely on the defences and limits of liability afforded by the Rules, the carrier will be jointly liable, thus giving rights to contribution, and it will remain open to the terminal operator to seek an indemnity from the relevant shipping line in respect of liabilities in excess of

² See Gertjan van der Ziel “Multimodal Aspects of the Rotterdam Rules” *CMI Yearbook 2009 Athens II* 301.

³ The United Nations Convention on the Liability of Operators of Transport Terminals in International Trade 1991 is not yet in force.

its liability under its terminal handling agreement. Whilst I can understand terminal operators' natural reluctance to be drawn into a mandatory regime, I hope that on closer analysis they may appreciate that the advantages counterbalance, if not outweigh, the disadvantages.

Now I will say something about the topics that are not at present covered by any international convention. Chapter 3 on electronic transport records is, I believe, largely welcomed. The chapters in the CMI Draft on freight and rights of suit were deleted by Working Group III. Some have argued that the chapters on delivery of the goods (chapter 9), the rights of the controlling party (chapter 10) and the transfer of rights (chapter 11) should also have been excluded, or their subject matter treated in some other way. I do not believe the objective of chapter 10 to be controversial, although there has been some criticism of the detail. However the control clause in the CMI Uniform Rules for Sea Waybills is important and the Rotterdam Rules apply to non-negotiable documents. Moreover Justice Johanne Gauthier explained the importance of these provisions in the electronic context.

Delivery of the goods is another matter. It gave rise to much controversy in Working Group III and the final text of article 47 was not settled until the Commission session in June 2008. Chapter 9 attempts to deal with two long-standing problems which the CMI was urged by the industry to grapple with in preparing the CMI Draft. It must be said that if there was a simple solution to these problems, it would have been found long ago. The first is the failure of the receiver to come forward and claim the goods at the discharge port. The second is the non-availability of the bill of lading at the discharge port. A convention cannot deal with the underlying causes of these problems, such as a bankruptcy in the sale and purchase chain, a falling market, or long credit terms. At present the first problem is often dealt with by an application to the local court to discharge and store the goods, or to sell them, for the account of the goods owner, but this is not always practicable. The second problem is often dealt with by a letter of indemnity, but this solution has well known shortcomings.

Article 43 of the Rotterdam Rules imposes an obligation under the Convention on the consignee to accept delivery and the Rules go on to set out provisions designed to protect the carrier if the carrier complies with them. These provisions have been described as a legal minefield. I accept that they are complex, but this is partly because three types of transport document must be provided for.

Article 47(2) offers a contractual opt-in solution to the problem of the non-availability of a negotiable transport document. It remains to be seen whether such an opt-in provision will prove acceptable to the industry and to financing institutions that rely on the transport document as security. The Rules offer formulae that commercial parties are free to take advantage of if they wish. If they do not, current practices will no doubt continue to be followed.

These provisions relating to the delivery of goods are controversial, but, unlike the provisions relating to door-to-door transport, to which I have devoted the greater part of this short presentation, I do not believe that they are fundamental to the international acceptance and success of the Rotterdam Rules.

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THE COLLISION CONVENTION, 1910

KLAUS RAMMING¹

The Organizing Committee has done an outstanding job in respect of this year's CMI Colloquium. I have never before been to Buenos Aires or Argentina at all and I am very impressed with what I have seen. This is truly a wonderful city and in particular this hotel with its special and traditional flair is an outstanding choice. Dear ladies and gentlemen of the organising committee, I thank you for all your time and efforts and hard work to make this Colloquium happen.

I am certainly more than proud and happy to be part of all this and to speak to you, before such a specialist audience, on the Centennial of the 1910 Collision Convention. This certainly is an event which should justify – even on an ever so busy agenda as the one of this Colloquium – a moment of contemplation, the more so since the Collision Convention and particularly its coming into being is so closely related to CMI. And it is a nice little side aspect that this beautiful and historic hotel where the Colloquium is held also appears to celebrate its centennial this year. Also, we, i.e. the German MLA, some weeks ago in Hamburg had a half day conference on various aspects of collisions between ships and we even managed to have the conference on the 23 September 2010, in fact the exact 100th birthday of the Convention.

The History of the Convention

It does not happen very often that an international convention actually remains valid for a full century. Also, it is certainly correct to say that the Collision Convention does not address many aspects and, in particular, does not deal with subjects that would cause much debate – at least: not today, because at the time, in 1910 and before, the issues the Convention considers were highly controversial. I will come to that in a minute.

The Collision Convention is a true CMI Convention. Francesco Berlingieri, who all of you will know, has spent much time in putting together the Travaux Préparatoires of quite a number of CMI conventions, including

¹ President of the German Maritime Law Association, Lebuhn & Puchta, Hamburg.

The Collision Convention, by Klaus Ramming

the Collision Convention. In this volume, you can find the Travaux Préparatoires of both the 1910 Collision Convention and the 1952 Arrest Convention. You may obtain this book as well as other works on other CMI Conventions here in the hotel from the Colloquium Secretary.

From the Travaux Préparatoires, you can see that first discussions on an international unification of the liability concerning the collision of ships appear to have commenced on a conference on commercial law in Antwerp as early as 1885. There seem to have been further discussions on other conferences in Lausanne in 1888, in Genoa 1892 and in Brussels 1895. This was even prior to the official founding of CMI in 1897. In any event, the Collision Convention was the first Convention CMI dealt in its history.

In 1897, the year CMI was officially established, a questionnaire was circulated in preparation of another conference in Antwerp. As you can see, the mechanism of using questionnaires to collect data on maritime law in the various states already was in place more than a hundred years ago. Until today, as you all know, CMI regularly sends questionnaires to the national MLA's, the responses to which are then considered and might trigger further CMI activities. This applies also to the topics under discussion on this Colloquium, i.e. the environmental salvage and the judicial sale of ships, which we heard about yesterday.

The questionnaire relating to collision issues circulated in 1897, *inter alia*, concerned liability in case of inevitable accidents, collisions where it could not be established by which vessel's fault the incident was caused, collisions where only one ship was at fault, the effects of compulsory pilotage, the liability of tug and tow, the question whether the liability in relation to third parties should be apportioned in relation to the fault of the vessels involved or whether there should be a joint and several liability, and limitation periods. Those of you who are familiar with the contents of the Collision Convention will realize that all of these issues in fact are addressed in the Convention.

Responses to the 1897 questionnaire were received – which is quite remarkable – from all MLA's which existed at the time, which were the MLA's of Belgium, France, the Netherlands, Norway, Great Britain and Germany. In the course of the conference in Antwerp in 1898, resolutions were adopted which reflected the points previously addressed in the questionnaire.

In yet another conference in London in 1899, there was a further resolution which was concerned with the distribution of liability in cases where both vessels were at fault. Also, the resolutions addressed and complained about the fact that quite a number of different liability schemes were in place in the various states.

The subsequent conference was held in Hamburg in 1902. One of the results was that one government – in the event, the Belgium government –

would be requested to organize a diplomatic conference to adopt a convention. Also, the Hamburg conference prepared a first draft of the actual Convention.

The final diplomatic conference was then held in Brussels in February and October 1905, in October 1909 and, ultimately, in September 1910. The Hamburg draft was discussed and, on 23 September 1910, adopted as the “International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels”, which is the full title of the instrument. On the same date, on 23 September 1910, another Convention, the Salvage Convention, was adopted, which meanwhile is being replaced by the new Salvage Convention of 1989.

The Collision Convention is refreshingly short and only includes 17 articles, of which only 13 articles in fact are operative ones. Compare this to the Rotterdam Rules’ 96 Articles and the Sales Convention’s 101 Articles and you have yet another proof that things just become more and more complicated.

The Entry into Force

The mechanism of the entry into force of the Collision Convention, dealt with in Article 16, is, compared with today’s standards, somewhat unusual. States were expected to declare whether they would be prepared to ratify the Convention. After one year, the Belgium government should enter into communication, as the Convention provides, with the prospective contracting states whether or not the Convention should enter into force. Only if this would be decided, the ultimate ratification by the respective states could be declared. The Convention then would enter into force one month later. In the event, the Convention was ratified by Austria, Hungary, Belgium, France, Great Britain, Mexico, The Netherlands, Rumania, Russia and Germany. The ratification documents were deposited on 1 February 1913 and the Convention duly entered into force on 1 March 1913. Today, the Collision Convention lists 48 contracting states, among them, beyond those I have mentioned before, Argentina, as we learned yesterday, as well as China and Greece but not, e.g. Liberia, Panama, and the US.

The Scope of Application

The Collision Convention is concerned with the collision of ships. This does not include a collision between a ship and a non moving object. Also, in cases where there was a collision with inland waterway vessels, the Convention would only apply if at least one ocean vessel was involved.

A collision, in principle, requires direct contact between two vessels or any of their parts. Also, the Convention’s scope of application extends to cases where there is no direct contact, but where one vessel’s execution or non-execution of a manoeuvre or non-observation of a regulation causes damage

to another vessel. One example may be a case where a give-way vessel failed to give way and forced the stand-on vessel to carry out an emergency manoeuvre to avoid the collision, in the course of which it runs aground. Collisions could also occur between vessels which are at anchor. Also, it is of no concern in what kind of waters the vessels collide, it may be inland waterways or at sea. The Convention would apply irrespective of whether the collision occurred in the territorial waters of a state, in its territorial sea, in its exclusive economic zone or on high seas. Neither is it necessary that the collision happens in the territorial waters of a contracting state.

However, there is one proviso which restricts the applicability of the Convention. It is only relevant if all vessels involved in the collision fly the flag of a contracting state. As I have explained, although the Convention has been ratified today by quite a number of states, those are not necessarily the ones with the greatest fleets.

Also, the Convention does not apply in cases where all vessels involved belong to the same contracting state where also the court seized is located. The Convention goes on to say that it is applicable in cases where a national law provides for the application of the Convention. Germany, for example, has amended its national law on collisions between ships to the effect that it is in line with the provisions of the Convention. Consequently, any time the liability of ships for a collision is, according to international private law principles, subject to German law, the provisions of the Convention indirectly become applicable, even if not all ships involved fly the flag of a contracting state. The same or a similar mechanism applies also in other states. Thereby, the scope of application of the Convention is greatly expanded.

The Liability Regime

The Collision Convention is concerned with the parties' liabilities for damages arising from the collision of ships. This includes damages to the vessels affected, damages suffered by property on board of the involved ships, in particular the cargo and crew's personal effects, as well as personal injuries suffered by persons on board at the time of the accident, which includes crew and passengers. Also, only some aspects of the parties' liability are addressed in the Convention, such as the basis of the claims – which is fault based liability – and limitation periods. What the Convention does not contemplate, at least not directly, is the question who is entitled to claim and against whom the claims may be brought. The Convention only addresses “ships”, which makes little sense in states where there is no *in rem* jurisdiction or *in rem* claims, such as in Germany. It would seem, however, that the persons entitled to claim are the owners of the vessels involved, the owners of the damaged objects as well as the injured persons. Neither does the Convention deal with the recoverable damages arising from collisions.

One of the central issues the Convention focuses on is the re-confirmation of fault based liability. Meanwhile, this concept has found its way into most jurisdictions, as claims in tort, at least in principle, may only be brought if there is negligence involved. However, at the time the Collision Convention was discussed, quite a number of different concepts were in existence. From our modern point of view, the concept of fault based liability is applied in the Convention in a somewhat complicated way, which until today reflects the struggle of the different concepts relevant at the time. What the Convention says is that in case of inevitable damage, no party is liable. If only one vessel is at fault, this vessel bears full responsibility. If more than one vessel acted negligently, the damage is shared between the vessels in accordance with their respective proportions of responsibility. If it is established that both vessels acted negligently, but if the amount of negligence involved on both sides cannot be ascertained, the Convention provides that the damage is shared equally between the respective parties. This is somewhat unique because normally, if the proportion of negligence on both sides indeed remains unclear, a court would perhaps say that both parties bore their own losses.

Internal Liability

As between the owners of the vessels involved, these principles apply directly. Each damaged vessel may claim a share of its damages in proportion to the other vessel's fault, whilst at the same time it must give credit in respect of the damages suffered by the other vessel, in proportion to its own fault. Or, in other words, the aggregate damage is shared between the vessels at fault in accordance with each vessel's liability. Either way, the result would be one net claim by one vessel against the other.

Third Party Liability

The Convention, as explained above, also awards claims to third parties, such as injured crew members and passengers or the owners of the cargo on board. Insofar, the Collision Convention's provisions are somewhat unusual, which again is owed to the situation at the time the Convention was adopted. Today, most of us will be familiar with the principle that in case where there is more than one tortfeasor, all of them would be jointly and severally liable. The Collision Convention does not provide so. Rather, in case of damage to property, third parties only have claims against each vessel in relation to that particular vessel's proportion of fault. Again, in other words, an owner against whom claims are brought may rely on the defence that he is only liable for the collision in the amount of, say, 50%. It is indeed a remarkable concept that one tortfeasor in fact has a defence based on the contributory negligence of some other party, i.e. the other vessel.

On the other hand, in most cases there will be a contractual relationship between the owner of the goods on board and the respective vessel owner, under which contractual claims may be brought. The Convention expressly provides that these claims are not in any way affected. As a result, the vessel owner may often end up with full liability, as he may not, in a contractual relationship, point to the other vessel's negligence as a defence.

All this does not apply to personal injury claims. Insofar, the Convention provides that the vessel owners are jointly and severally liable. Consequently, claims by injured third parties may be brought in full against either of the vessels at fault, who must then seek to get reimbursement from the other vessel.

Limitation Periods

Another issue addressed by the Convention are limitation periods. In principle, there is a two year period, which begins at the time of the collision. In respect of recourse claims, the Convention provides for a one year period which begins when payment of the primary claim has been effected. The Convention expressly leaves it to the law of the court seized, whether the limitation period is somehow interrupted or stayed. As you will know, the law on the running of limitation periods varies between states. As a result, there may be cases where it actually depends on the court where suit is brought whether or not a claim meanwhile is considered to be time-barred or not. Therefore, unless you have agreed on jurisdiction before hand, a party seeking to recover should make sure to strictly observe the two year period.

Other Conventions

The Collision Convention does not deal with all aspects of a collision between vessels. There are other conventions which address further issues, such as the Limited Liability Conventions, under which a vessel owner and other parties concerned with the vessel's operation may limit their liability for all claims arising from one incident. Further, the Collision Convention is supported by other conventions dealing with procedural issues, such as the Arrest Convention, the Convention on Civil Jurisdiction in respect of Collisions between Ships as well as its counterpart on criminal liability jurisdiction. Also, the Collision Convention served as a basis for a corresponding local European convention on collisions between inland waterway vessels, which was adopted in 1960.

Summary

At the time the Collision Convention came into being, collisions between vessels were quite frequent. I also have my personal experience with

collisions. As a young second mate officer of watch I in fact was involved in a collision in dense fog some early morning in the Kiel Canal. It was not too spectacular with the two passing vessels just scraping along each other. We never made it into any headlines, just a small note in Lloyd's List. All this was 27 years ago.

The number of collisions between vessels today is, fortunately, steadily decreasing. This is due to improved vessel design, improved radar technique, AIS, improved ship management and local traffic control systems. However, collisions still occur. Until today, the Collision Convention in a quiet and efficient way serves the maritime industry by providing an internationally accepted legal regime on particular points concerning collisions of vessels. This is probably the best you can say of a Convention. There never were serious discussions about any protocol to amend the Convention, or of another Convention which should replace it. This is far more than what can be said about most of the other maritime conventions. One can easily imagine the Collision Convention still being there one hundred further years from now, when all of us will be long gone.

The Convention focuses on just a few issues but highly important ones. It re-confirms the principle of fault based liability. Also, and in particular, it is applicable if the collision occurred outside territorial waters, in particular in the exclusive economic zone and on the high seas. This is an issue international private law has struggled with for many decades. If the Collision Convention applies, at least the basic liabilities are clear. Also, the Collision Convention in a unique way focuses on the collision and submits the liability of all vessels involved and all mutual claims to one set of rules. This approach is quite different from the way the normal international private law works, as it only looks at each claim separately. As a result, according to general international private law principles, the claims arising from one collision may be subject to the laws of different states. In this respect, the Collision Convention again offers the better approach.

PIRACY

PATRICK GRIGGS¹

As at September 9th 2010 19 ships and 383 crew members were being held by Somali pirates. There is a public perception that piracy is exclusively a Somali problem. This is far from the case. The Commercial Crime Service of the International Chamber of Commerce issues a regular “Piracy Prone Area” bulletin. The current Bulletin includes Bangladesh, Indonesia, Malacca Straits, Malaysia, South China Sea, Vietnam, Nigeria, Guinea, Cameroon, Brazil and Peru. Nor do the Somali pirates restrict themselves to home waters. Backed by sophisticated “mother” ships they have extended their area of operations to include waters off Kenya, Tanzania, the Seychelles, Madagascar, the Maldives, Oman, Southern Red Sea, Gulf of Aden and generally throughout the Indian Ocean. If you want to see a vivid illustration of the extent of the problem the ICC website includes the IMB Live Piracy Map which gives details of all reported attacks, attempted attacks and suspicious vessels.

We lawyers like to think that we can solve most problems. But, believe me, we have a tough one here. It may just be that piracy is one of those human endeavours where the law offers no easy legal solutions. Let me explain.

Piracy under International Law

Part VII of UNCLOS is entitled High Seas and includes provisions relating to piracy. These provisions are generally considered to reflect customary international law on piracy.

The definition of piracy in Art. 101 covers “any illegal acts of violence or detention, or any act of depredation” committed on the high seas for private ends against another vessel or persons or property on board. This certainly covers the attacks on merchant shipping off the coast of Somalia and in the other less well publicised piracy hot spots.

¹ CBE, Past President CMI.

Art. 92 re-states the general rule that ships on the high seas are exclusively subject to the jurisdiction of their flag state. However, Arts. 105, 106, 107, 110 and 111 allow warships and other authorised ships on government service to stop and search any vessel on the high seas that they have reasonable grounds for suspecting is engaged in piracy. They may also seize pirate ships. Some warships may be constrained by national laws which restrict their right of arrest. Thus a warship from country A may only be able to arrest pirates from country A or where an attack has been made on a ship flying the flag of country A. A right of hot pursuit onto the high seas from territorial waters is also granted to sovereign states.

UNCLOS defines the high seas, for the purposes of acts of piracy, as those waters which lie beyond the seaward limit (generally 12 miles) of the territorial sea. Acts within the territorial sea which would be regarded as piracy if committed on the high sea are treated as ‘armed robbery at sea’ and are subject to the primary jurisdiction of the coastal state in which the act takes place. Those who drafted UNCLOS did not envisage the situation where a coastal state was unable, due to the internal political situation, to police its own waters.

Piracy is a crime of universal jurisdiction and pirates are, by definition, criminals. However, they are not *per se* ‘individuals taking a direct part in hostilities’ in an armed conflict. This means that they cannot be targeted with lethal force and this explains the reluctance of members of the multinational Combined Task Force to use firearms. Pirates are not, *per se*, terrorists though, in certain circumstances their actions may represent offences under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (‘SUA’) and the 1979 Convention against the Taking of Hostages.

In summary UNCLOS appears to provide a good legal framework for combating piracy.

Do the UNCLOS provisions work?

The provisions on piracy apply only on the high seas and not (as explained above) within territorial waters where piracy is treated as ‘armed robbery at sea’ and as exclusively subject to the jurisdiction of the courts of the coastal state. UNCLOS does not permit seizure of a pirate ship and arrest of the pirates in the territorial sea unless the ship flies the flag of that state.

UNCLOS governs acts of piracy committed by private ships for private ends and not state sponsored operations. For example the recent attack by Israeli commandos on the “*Mavi Marmara*” was described by some commentators as an act of “piracy”. It was not because it was not an act for private ends.

Criminal law issues

Rights to board, search and seize foreign ships and persons on board exist under international law thanks to UNCLOS. However, prosecutions are subject to national law. It is therefore essential that the rights given under international law are implemented by national legislation so that national courts are able to deal efficiently with those arrested and accused of crimes at sea. (In this context it is interesting to note that in a recent case in Norfolk, Virginia the judge, in determining whether there had been an act of piracy found himself looking at national law of 1819 – some updating of national law is clearly needed here.)

Art. 100 places a duty of cooperation in the repression of piracy on states parties. This cooperation should involve states parties making arrangements to transfer suspected pirates from the arresting ship to another state for prosecution. This, in its turn, depends on the existence of an effective national piracy law in the receiving state.

By a series of Resolutions the UN Security Council has decreed that states which cooperate with the Somali Transitional Government may deal with acts of piracy committed within Somali territorial waters as though they had been committed on the high seas. Generally, however, prosecutions can only take place under national law, which will probably not extend to acts committed within the territorial sea of another state.

Payment of money to terrorists will often be a criminal offence under national law. Pirates may be classed as terrorists in certain circumstances and if they are, payment of ransoms to secure the release of hostages may amount to a criminal offence in itself. Further, on April 13th 2010 a US Presidential Executive Order was issued apparently making it an offence under US law to pay ransoms to three specific groups of pirates. US shipowners and insurers need to tread carefully and it remains unclear whether this applies to secondary contributions paid by such as cargo interests. Nobody likes paying ransoms but often needs must. In February 2010, in a case involving the “*Melati Dua*”, the English High Court decided that the payment of a ransom for the release of the cargo on a hijacked ship was not illegal under English law.

Civil Law issues

The types of ship which are targeted by pirates are likely to be part of a complex commercial enterprise. Apart from the owners there may also be charterers, cargo owners and insurers involved. Issues of civil law will undoubtedly arise. Should the owners employ armed guards and if they do not do so are they in breach of their contractual obligations to protect the maritime adventure? Could unauthorized actions by armed security guards jeopardize the owner’s insurance cover? Should all the commercial interests be involved in ransom negotiations and contribute to any ransom which is

paid to obtain the release of ship, crew and cargo? Will crew members who are taken hostage have the right to claim damages from owners for failing to provide a safe place of work? And so the questions multiply.

International Law issues

Giving states jurisdiction to seize ships and pirates only on the high seas is based on the premise that coastal states, which have exclusive jurisdiction to police their own territorial waters, will be able and willing to do so. This is not always the case. Somalia itself is a good example of a state which is unable to police its own waters. This problem has been partly solved in the case of Somalia by the UN Resolutions referred to earlier. However, there is a clear case for changing the international law in this respect.

There are human rights issues lurking in all these cases. Even suspect pirates have rights. They may be entitled to refugee status in the country to which they are rendered for prosecution and may have the right to resist extradition from that country.

Is the system broken?

It is evident that for a number of reasons the UNCLOS piracy provisions are not working as intended. In 2009 The IMO Secretariat conducted a survey of national laws on piracy amongst member states. Of the 28 states which responded very few have accepted the UNCLOS mandate and legislated specifically against piracy. In this context I should mention that in August 2007 CMI submitted to the IMO Legal Committee a paper entitled 'Maritime Criminal Acts-draft Guidelines for National Legislation'. (LEG 93/12/1). It was suggested by CMI that states with an inadequate national law on maritime criminal acts (which include piracy) might, when carrying out a review of their national legislation, find the guidelines a useful 'checklist' against which to test their new legislation. The Legal Committee decided to note the terms of the CMI submission but not to take the matter any further at that time.

Why then are states apparently reluctant to take to themselves the extraterritorial powers to act against pirates which UNCLOS permits? I suspect that this is because most states do not like the practical problems which implementation would create.

If a naval vessel arrests a group of pirates off the coast of Somalia the next step would be to find somewhere to disembark them for prosecution. This would need to be done promptly as even suspect pirates have rights to a fair and speedy trial. For some time Kenya was willing to receive and prosecute suspect pirates but it has now closed the door as the influx of suspect pirates was placing undue strain on its resources. The alternative would be to render the suspects to the state of the naval vessel involved in the

seizure. However, all states have a natural reluctance to fill already overcrowded prisons with foreign nationals who, if found not guilty, would immediately apply for (and probably obtain) political asylum. Think also of the logistical problems of repatriating members of the naval vessel's crew to give evidence at a trial. In April 2010 a Resolution of the UN Security Council called upon all states to "criminalise piracy under domestic law and favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable human right law." I think that this call is likely to fall on deaf ears.

What can be done?

On January 14th 2009 24 states and 5 regional and international organisations formed the "Contact Group on Piracy off the Coast of Somalia (CGPCS)". The Contact Groups Working Group 1 was to deal with military and operational issues including information sharing. Working Group 2 was to address judicial aspects. Working Group 3 was to deal with self-defence and Working Group 4 was to seek to improve diplomatic relations and public information. On behalf of CMI I became involved with Working Group 2 and suggested that the CMI Guidelines might be a useful tool for states wishing to update their national piracy law. This suggestion was dismissed out of hand by the Danish chairman of the Working Group. His feeling was that Guidelines or even Conventions have no part to play in solving the piracy problem. I have to say that I think he is probably right on this. (I should mention that on Thursday October 21st Working Group 1 met at IMO in London to work on "regional capability development and operational coordination, including Indian Ocean military operations". I do not know the outcome of that meeting.)

Also in January 2009 17 states from the Western Indian Ocean, Gulf of Aden and Red Sea areas adopted the, so-called, Djibouti Code of Conduct Concerning the Repression of Piracy. This Code is designed to ensure cooperation between these states to prevent acts of piracy and to apprehend and prosecute suspected pirates. The Code also calls on Participating States to review their national legislation to ensure that piracy is specifically recognized as a crime.

Earlier this year the UN Security Council asked the Secretary General to present a report on the various possible options. This report was published on July 26th and suggested that the solution was to build on the present system and, specifically, to improve the regional court and prison capacity to deal with pirates. I suspect that the meeting of Working Group 1 of CGPCS referred to earlier may be linked to this proposal. The Secretary General's Report also revealed that no less than 700 pirates had been caught and subsequently released between January and July 2010.

Along with all these quasi-legal initiatives EUNAVFOR continues to patrol the increasingly wide area of the Indian Ocean in which attacks occur. A thankless and frustration exercise for those involved.

For those desperately seeking solutions there has been recent worrying news. The rolling average for published ransom payments for the last 6 ships released stands a little above US\$ 4m. At the same time the average period of detention is 114 days. Both these figures are significantly up on the corresponding ones for last year. This suggests a developing battle of wills between the pirates, who feel themselves under no time pressures, and owners, who are trying to keep ransoms as low as possible. It is also disconcerting to discover that there is now a “Piracy Stock Exchange” operating in Harardhere in Somalia with investors buying and selling shares in upcoming attacks.

I end on that gloomy note with the thought that when it comes to piracy it is easy to point to legal solutions but less easy to see how those solutions can be applied in practice.

A COMPARISON OF LEGAL REGIMES IN THE ARCTIC AND ANTARCTIC

NIGEL FRAWLEY¹

The Arctic

Introduction

I. My friend Holger Martinsen is the deputy legal adviser in the Argentine Ministry of Foreign Affairs. We are very fortunate to have him here today to speak on the Antarctic. I have allocated more time to him as I suspect there will be more interest amongst delegates for what is going on in the Antarctic, as the Arctic has been the subject of many conferences in recent years.

As you know, I am the Secretary General of the CMI and I am from Canada. I put this topic on the programme as there is a growing interest in the Polar regions, largely due to climate change and new technologies. The Executive Council has authorized the establishment of a small working group on the Arctic/Antarctic to identify issues for study by a larger international working group in the future. The working group will initially study the applicability of existing private maritime law conventions and other laws on the Arctic and Antarctic.

I will be speaking on the legal regime in the Arctic and recent developments in that vast area.

I have put up two charts - one of the Arctic from a Canadian perspective. The other looking down on the North Pole showing the five Arctic coastal states – Canada, Denmark, Norway, the Russian Federation and the United States of America.

II. You will hear from Mr. Martinsen that the legal framework in the Antarctic is comprehensive. On the other hand, there is no systemic legal framework in the Arctic. Also, unlike the Antarctic, sovereignty is a major issue in the Arctic, spurred on by the discovery of new oil and gas fields that

may contain as much as 30% of the World's undiscovered gas and 13% of the World's undiscovered oil. It is also believed to be rich in gold, silver and diamonds.

I will now set forth the current major sovereignty issues:

i) Beaufort Sea

This is a dispute between the US and Canada and concerns an oil and gas field to the east of Alaska and to the north of the Canadian Northwest Territories. The problem is that the two countries use different methods to calculate the Canada-US boundary in the Beaufort Sea. The two countries recently agreed to attempt a settlement. Canada relies on an interpretation of an 1825 treaty between Great Britain and Russia (which owned it at the time) that established the Yukon-Alaska border and claims that the maritime boundary follows the same line "as far as the frozen ocean." The US draws the boundary differently with a more modern approach to drawing water boundaries. Canada says that the 1825 treaty meant up to and across the frozen sea, which nearly 2 centuries later is increasingly unfrozen.

ii) Hans Island/Lincoln Sea

This is a dispute between Canada and Denmark. The problem is a tiny island off the west coast of Greenland that falls within both countries' territorial claims, plus a small stretch of the Lincoln Sea that is in dispute. The two countries are presently posturing with politicians, troops and tourists visiting what is essentially a large rock sticking out of the water.

iii) Continental Shelf

This is a dispute between the Russian Federation and Canada, and possibly Denmark. According to the United Nations Convention on the Law of the Sea, countries can claim the seabed far beyond their land borders based on any geographic extension of their continental shelf. Russia is laying claim to everything up to and including the North Pole. Canada disagrees. The Russians have already filed their claim with the United Nations Commission on the Limits of the Continental shelf. They have been required to file more evidence in support of their claims. Canada has until 2013 to submit its claim, after which the UN will make recommendations that the countries can accept or ignore.

The central issue is the Lomonosov Ridge (which apparently contains large amounts of minerals and oil) the exact limits of which is not yet known. Generally, it runs for 1,800 kilometers between Canada's Ellesmere Island and Russia's New Siberian Islands. To both countries it is an extension of their sovereign territory. As we all know, international law defines territorial waters as 12 nautical miles out from the coast and sovereign rights exist over the Exclusive Economic Zone ("EEZ") 200 nautical miles beyond that, or

even beyond 200 nautical miles if its continental shelf extends outwards. It may take 10 or 20 years before the Commission rules.

iv) Northwest Passage

The status of these waters is unresolved between Canada and most of the world. Ownership of the islands in the Canadian Arctic archipelago is not in issue. However, the passage of ships through the Arctic archipelago is argued to be within Canada's 200 nautical mile EEZ. The problem is whether it is actually Canadian territory. Canada says that they are internal waters. The United States and most other countries say they are international waters, and that ships are entitled to "innocent passage" through it, like the Straits of Gibraltar and the Hormuz Straits. There is no easy solution. With a large amount of goodwill (and perhaps other considerations), the United States might agree to accept Canadian authority over the Passage to deter environmental disasters and security threats.

v) Barents Sea

There has been a dispute for 40 years between Norway and Russia over a large area of the Arctic Ocean adjacent to those two countries which is thought to contain 40 billion barrels of oil. Last month they signed the Barents Sea Pact to resolve their differences and share the resources.

III. Administration/Territorial jurisdiction

- The five Coastal States all govern their territories with National law, including territorial waters and, where they can, over their EEZ. For example, Canada proclaimed the Arctic Waters Pollution Prevention Act in 1970 which regulates protection of the environment in what Canada perceives to be its territory. Ships entering that territory and particularly the Northwest Passage are required to have certificates of financial responsibility in case of oil spills. So far, all ships comply. Canada governs its territory in Nunavut, the Yukon and North West Territories and in the islands to the far North.

- The Arctic Council, comprising the five Coastal States, meets regularly to oversee and coordinate the 1991 Arctic Environmental Protection Strategy - a non binding agreement to protect and preserve the Arctic environment, with the involvement of the indigenous peoples, and other common issues. Finland, Iceland and Sweden have joined the Arctic Council. China, the European Union and others have applied to join the Arctic Council as observers.

- The European Union has issued reports and regulations concerning the Arctic environment, energy, security and governance.

- The IMO has issued reports and regulations dealing with sea lanes, pollution from ships, tourism (particularly guidelines for cruise ships

operating in the Arctic) , unsafe routings in the North West Passage and the North East Passage over the top of Russia, , and guidelines for ships operating in ice-covered waters.

IV. United Nations Convention on the Law of the Sea

It is now in effect and applies in part to the Arctic. The USA has not ratified it, though it is widely expected that they will do so.

Articles relevant to the Arctic include Articles 1, 2(1), 5, 87, 197 and 234. The latter article, you will be interested to know, refers to “Coastal States” so quare whether it applies to the Antarctic where there are no “Coastal States”, as defined. I look forward to hearing from Mr Martinsen on this.

V. Protection of the Environment

- Canada’s Arctic Waters Pollution Prevention Act.
- UNCLOS Article 234 applies to vessels in ice covered waters within the Coastal State’s EEZ but gives no protection for the frozen high seas in the Arctic Ocean (which are now rapidly melting).
- Ilulissal Declaration of 2008 by the 5 Coastal State countries to safeguard the Arctic.
- Arctic Environmental Protection Strategy, 1991.
- Barents European Arctic Council (EU, Iceland, Norway and Russia) deals with environmental issues and resources
- EU environmental regulations
- IMO mandatory Polar Code and guidelines

VI. Shipping Routes

- Northwest Passage from Southwest of Greenland to the north and east of Alaska. There have been a number of transits over the years, most with Canada’s consent. It is to be noted that the great Norwegian explorer, Mr Amundsen, who first transited the Northwest Passage over a century ago did not seek consent! It is submitted that Canada and the US should agree to disagree over its legal status and work closely over environmental and security concerns. Canada presently keeps track of Arctic shipping and its Northern Strategy plans a regulated Arctic traffic zone with mandatory ship reporting. All are agreed that an oil spill in the fragile Arctic would be a disaster. Ships taking the Northwest passage enjoy a 2200 nautical mile shorter voyage from Rotterdam to Kobe, than proceeding through the Panama Canal.
- Northeast Passage (also known as the Northern Sea Route) along the top of the Russian Federation. Russia has a ship reporting mechanism in place

and there is a distinct possibility that passage fees will be charged in the near future. Use of this passage trims 2400 nautical miles off a voyage from Shanghai to Hamburg.

- Arctic Ocean As the frozen sea melts, it opens up many possibilities for ship routings through the Arctic Ocean, including into Canada's Hudson's Bay.
- Beaufort Sea. This runs south of the Northwest passage to the west, and up the east coast of Alaska and westwards into the Bering Sea and the North Pacific. Canadian and US oil industry vessels and ships departing the Canadian Mackenzie River Delta use this routing.

VII. Impact of Climate Change

– The large increase in shipping in recent years, both commercial and tourist, gives rise to the need for better charts. There were three groundings a few months ago - the passenger vessel *Clipper Adventurer*, the Tanker *Challenger* and the Tanker *Nanny*. Thankfully, there were no oil spills. From 1906 to 2006 there were 80 voyages in Arctic waters . In 2009 alone, there were 24! The Government of Canada has just announced that the 5 Coastal States have established the Arctic Regional Hydrographic Commission with more accurate charts as the end result. Canada has recently embarked on an ambitious mapping programme through the use of robotic technology. A company in British Columbia, International Submarine Engineering Ltd. ("ISE"), a world leader in small commercial submarine construction, manned and unmanned, has built an autonomous underwater vehicle ("AUV") with robotic manipulator systems and unique computer software. It was used for the first time a few months ago in the high Arctic, north of Borden Island, which operated under the ice down to great depths and was able to give accurate descriptions and depths of the seabed. This has set the stage for a more extensive survey in 2011 with the Canadian Hydrographic Service and the Department of Natural resources. These Power Point slides illustrate the start of an ambitious programme to have more accurate charts and to better support Canada's claims.

- there is a need for a commercial shipping infrastructure with repair facilities, spill clean up stations, improved aids to navigation, and more icebreakers etc.
- there is, in particular, a need for better search and rescue facilities.

VIII. Time does not permit much on this, but the private sector has long been involved in the North. The insurance industry has kept statistics of ice experience by ships over the years. Mining ventures and oilfields are being served by private carriers. Canada has privatized the annual seaborne re-supply of Arctic island settlements, with Coast Guard icebreakers servicing

only the most inaccessible settlements. The Government of Nunavut contractually controls terms of carriage to suit northern needs. There are ice clauses and safe Port warranties in charterparties. There are No Trading zones. There are defined navigation limits. More favourable ice conditions permit northern extension of fisheries.

IX. Conclusion

The frantic rush to stake claims in the Arctic (Professor Donald Rothwell of the Australian National University College of Law has described it as “the last great land grab!”) now includes China which in recent years has taken an active interest in Arctic international waters and their seabed. With its considerable cash reserves, it is open to China to partner with other countries that have territorial claims but insufficient money to extract the resources. The complicated legal claims to territory argue for a resolution of legal differences, rather than litigating them for decades in the Law of the Sea International Court of Justice in Hamburg. One could also argue for a new international regime to control the Arctic. The thawing of Arctic ice opens up opportunities for more ship operators to use the Arctic and a taming of the wild North may be called for.

I now have pleasure in handing over to Mr Martinsen who will likely describe a much more orderly legal regime in the Antarctic.

THE LEGAL REGIME OF ANTARCTICA

MARIO OYARZÁBAL¹

The legal regime of the Arctic has been eruditely explained by Mr. Nigel Frawley. I have been asked to give now a short account of the regime established by the Antarctic Treaty, including the rules applicable to ships that navigate in Antarctica.

It may be worth starting by reminding that the activities that take place in Antarctica are governed by the Antarctic Treaty signed in Washington DC in 1959. The Treaty is, so to speak, the cornerstone of a system composed of a series of more specific conventions and other rules adopted in order to deal with different aspects of cooperation in Antarctica and the protection of the environment including its natural resources. Those rules are basically:

- The measures, decisions and resolutions adopted at the Antarctic Treaty Consultative Meeting by consensus;
- The Convention for the Conservation of Antarctic Seals, which was signed in London in 1972 and entered into force in 1978;
- The Convention on the Conservation of Antarctic Marine Living Resources, which was signed in Canberra in 1980 and entered into force in 1982; and
- The Protocol on Environmental Protection to the Antarctic Treaty, which was signed in Madrid in 1991 and entered into force in 1998.

Also in 1988, a Convention on the Regulation of Antarctic Mineral Resources, was adopted in Wellington, New Zealand. However, this Convention is not expected to enter into force as it was superseded by the Environmental Protocol.

The Treaty's 'object and purpose' is to ensure that Antarctica is used only for peaceful purposes, and that free access to scientific research, and cooperation towards that end, as postulated in the International Geophysical

¹ Juris Doctor (University of La Plata), ISEN, Master of Laws (Harvard); Adjunct Professor of International Law (University of La Plata); Career Diplomat; Former Deputy Consul of Argentina in New York; currently a Counselor at the Office of the Legal Adviser of the Argentine Ministry of Foreign Affairs. The views expressed here are those of the author and do not necessarily represent the views of, and should not be attributed to, the Argentine Ministry of Foreign Affairs or the Office of the Legal Adviser.

Year (1957-1958), continues; even though military personnel and equipment may be used in pursuing peaceful purposes. The Treaty is open for accession to virtually any State, in addition to the 12 nations active in the IGY which are the original Parties.

According to Article VI, the Treaty applies to the area of 60° South Latitude, including all ice shelves, but without prejudicing the rights of States (and not only those of contracting Parties) with regard to the high seas within that area. That is to say that the regime of the high seas applies in the area in conformity with international law, including the principle of the freedom of high seas and its exceptions, the maintenance of order on the high seas such as the rules of customary law on piracy and other illegal acts, jurisdiction over ships, oil pollution casualties, etc. Such regime is no other than the one that stems from the United Nations Convention of the Law of the Sea (UNCLOS), 1982, and related instruments.

Article VI is, thus, a fundamental provision. As we all know, the Antarctic Treaty's key provision lays on Article IV which reserves the rights and claims of contracting Parties to territorial sovereignty, and denies the creation of new claims or enlargement of existing claims, in the area. There are seven claimant States: Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom, whose claims are based on a number of titles including occupation, discovery, rights to succession, geographical proximity, geological affinity, the exercise of jurisdictional acts, and a combination of them. Some claims overlap partially or totally. For example, the sector claimed by Argentina overlaps in its entirety with the sector claimed by the United Kingdom and partially with the sector claimed by Chile. On the other hand, there are parts of Antarctica which are unclaimed.

Article VII, in turn, creates a mechanism for observation and inspection, according to which, each Party may appoint national – no international – observers, with a right of access to any parts of Antarctica, including any facilities, equipments, ships, aircrafts, and places of embarkment or disembarkment in Antarctica.

Article VI is to be read together with Articles IV and VII insofar, for the claimant States, Article VI has a different scope of application than for States that do not recognize claims to territorial sovereignty in Antarctica and that therefore object to the rights and jurisdiction over sea adjacent to their coastlines.

Given that most transportation, including 95% of tourism in Antarctica, is by sea, and what has just been said about the status of the waters in the area, it may be worth reviewing briefly the rules developed by competent international organizations, notably by the International Maritime Organization (IMO), purported to promote safety for ships and for navigation, which may apply in Antarctica. For those who are interested in deepening their knowledge on the impact of the continuing increase of

tourism in Antarctica and the impact caused to the legal regime, there exists an outstanding paper written by my colleague Fausto López Crozet from which my presentation borrows a great deal.

The International Convention for the Safety of Life at Sea (SOLAS), 1974, provides for internationally accepted standards in relation to the design, construction, equipment and operation of ships, as well as measures to prevent accidents. The International Convention on Maritime Search and Rescue Convention (SAR), 1979, establishes a basic international framework for cases of emergency. The Standards of Training, Certification and Watchkeeping (STCW) Convention, 1978, is aimed at securing that ships have a competent, trained, certified crew. Last, the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, with its Protocols, seeks to minimize pollution attributable to shipping both due to operational reasons and to accidents.

Most Consultative Parties to the Antarctic Treaty (28 countries in total, including the original 12 and other States that have become Consultative Parties by acceding to the Treaty and demonstrating their interest in Antarctica by carrying out substantial scientific activity there) are State members of IMO (which is formed of 167 State members) and have ratified many of IMO Conventions. Indeed, the relation between IMO and the Antarctic Treaty is not new.

The Antarctic Parties adopted, in 2005, Decision 8 recognizing that IMO is the competent organization to deal with navigation related rules. The previous year, in 2004, the Antarctic Treaty Consultative Parties had taken the decision to send the ‘guidelines for ships that navigate in Arctic and Antarctic iced-covered waters’ requesting IMO to examine them as a matter of priority. It may be worth mentioning that though, IMO is currently developing a set of binding rules, at least some of them will be, for ships that navigate in Polar waters. The so-called Polar Code is yet at a very early stage and may take several years to complete. Once adopted, the Code should provide for a set of rules and recommendations which are specific and adequate for polar navigation in terms of training, ship equipment and design and, as proposed by some, risk criteria that take into due account environmental impact. The Code may also take into consideration differences that may be relevant in navigating Arctic vis-à-vis Antarctic waters.

It is, therefore, submitted that a close complementation between IMO and the Parties to the Antarctic Treaty has proven useful in the past and should be further developed particularly if the Parties to the Antarctic Treaty want to prevent and punish Treaty violations by ships from non-State Parties. Although these ships are not bound by the rules of the Antarctic Treaty System, most ships have a flag of States that are a Party to IMO and that have adopted some IMO rules.

In sum, and like in the Arctic, navigation in Antarctica is characterized

by a series of factors: extreme weather conditions; variable conditions of ice; lack of sufficient knowledge of the submarine topography which, in turn, results in inadequate navigation charts; crew that lacks the experience and ships that are unprepared to navigate through ice; and rescue systems that are likewise inadequate for the Antarctic weather. Many of these matters are dealt with at IMO level and require an appropriate relationship between IMO and the Consultative Parties to the Antarctic Treaty.

When I was invited to speak at the Colloquium, I was asked not to focus only on transportation and navigation in Antarctica, but to give a more comprehensive view on the Antarctic regime. I have already spoken, yet briefly, on territorial sovereignty in Antarctica and the situation created by overlapping claims. I have also spoken a little bit more in detail on navigation and more generally the regime of the Antarctic waters. I will, therefore, give now a very short account on some environmental issues in Antarctica focusing on the protection on marine living resources and the prohibition of activities related to mineral resources.

As I already mentioned, in the late 1970s and early 1980s, two conventions were adopted to protect the Antarctic marine living resources: the 1978 Convention for the Conservation of Antarctic Seals; and the 1980 Convention on the Conservation of Antarctic Marine Living Resources. These conventions were adopted after a number of scientific studies were released, accounting that overexploitation caused by uncontrolled fishing of Antarctic species, especially krill, could lead to irreversible damage to the populations of other species of the Antarctic marine ecosystem, including whales. The Convention on the Conservation of Antarctic Marine Living Resources provides for a delicate balance of interests aimed at preserving legally based positions, economic interest and the responsibilities imposed by a particularly vulnerable ecosystem; in other words, the interests of the fishing countries, of countries which do not carry out commercial fishing and are concerned with the conservation of species, and of countries which claim sovereignty or jurisdiction in the area of application. According to the Convention, its objective is the conservation of the Antarctic marine living resources, the term 'conservation' including 'rational utilization'. The Convention creates an institutional underpinning directed to achieve the Convention's ends. The organs include the Commission for the Conservation of Antarctic Marine Resources, the Scientific Committee and the Secretariat. The power to enact conservation measures lies on the Commission. The Convention also provides for a dispute resolution system enabling the parties to submit their differences to the International Court of Justice or an arbitral tribunal whose decision is deemed definitive and binding.

In 1989, at the Consultative Meeting in Paris, an agreement was reached to negotiate a regime aimed at the comprehensive protection of the Antarctic environment and dependent and associated ecosystems, including provisions

related to mining activities. Only two years later and after only four rounds of negotiations, the Protocol on Environmental Protection to the Antarctic Treaty was adopted in 1991. The Environmental Protocol complements and does not modify the Antarctic Treaty nor other Conventions in place within the Antarctic Treaty System. The Parties to the Protocol designate Antarctica as a 'natural reserve devoted to peace and science'. A number of 'environmental principles' are enacted, which all activities permitted in Antarctica must comply with. Emphasis is placed on the need to plan and conduct activities on the basis of prior assessments in order to minimize their possible impacts on the environment. A Committee for Environmental Protection is created, whose functions are to formulate recommendations to the Parties in connection to the implementation of the Protocol. Last but not certainly least, the Protocol prohibits 'any activity relating to mineral resources, other than scientific research'.

Now, to wrap up my presentation, I would like to mention that there are currently two positions regarding Antarctica. Some countries and authors consider the Antarctic Treaty System as illegitimate because it is formed by a limited, though qualified, group of countries, and would like to keep Antarctica beyond any national jurisdiction, declaring it the 'common heritage of Mankind'. Conversely, other countries and authors, including obviously the claimant States, seek to strengthen the Antarctic Treaty System. In general, most texts adopted at the United Nations only state the need that the United Nations are informed about the 'Antarctic matter' and that any exploitation of mineral resources in Antarctica should benefit all Mankind. When the Antarctic Treaty was signed in 1959, Antarctica was a territory of many potential conflicts, in view of the overlapping sovereignty claims and the possibility that the Cold War extended there. 50 years later, the Antarctic Treaty and other related instruments show that this initial situation was successfully overcome. This may be due, partly, to the Antarctic Treaty, a treaty of only 14 articles yet flexible enough to face the new circumstances unforeseen at the time of its celebration.

The demilitarization and denuclearization of Antarctica, together with a system of inspections that allows countries to confirm at any given moment that other countries comply with the Treaty provisions, have proven crucial for strengthening cooperation and mutual confidence among the Parties.

The key achievement of the Antarctic Treaty was to freeze or leave aside highly conflictive matters virtually impossible to resolve.

The adoption of the Environmental Protocol, in turn, has neutralized in great deal the arguments of countries which sought the complete internationalization of Antarctica for ecological reasons; and has kept afar certain countries interested in a hypothetical exploitation of minerals that may exist in the area.

In sum, we can see today the existence of an Antarctic System that has

Miscellaneous

proven to be open to virtually all States and other organizations, and which is dynamic and flexible. These elements point out to a system suitable to accomplish the basic objectives established in the 1959 Antarctic Treaty, and helps to explain the absence of initiatives to amend the Treaty as well as the increasing number of Parties to the Treaty and its related instruments.

HARMONIZATION OF THE POLLUTION SCHEMES OF THE COUNTRIES RELATED TO THE WATERWAY *HIDROVÍA PARAGUAY-PARANA*

JORGE M. RADOVICH¹

The precedent speaker has explained the importance and extension of the waterway *Hidrovia Paraguay-Paraná* for the region. Thus, for the sake of brevity, I will not repeat the information.

The Member States of the *Hidrovia Paraguay-Paraná* Programme are, in alphabetical order, Argentina, Bolivia, Brazil, Paraguay and Uruguay. The Authority of the *Hidrovia* is the Intergovernmental Committee of the *Hidrovia* (CIH, by its acronym in Spanish) composed of one representative for each of the said countries, with domicile in Buenos Aires. Its decisions shall be taken by unanimity. Furthermore, the Executive Secretary is exercised by each country in alphabetical order and the period of exercise lasts for two years.

Moreover, the Commission of the Agreement is the technical hand of the CIH.

As of 1989 the *Hidrovia Paraguay-Parana* Programme is part of the Del Plata Basin Treaty.

The question that we want to pose and will try to answer is: in case of oil or HNS pollution coming from one or more vessels sailing the *Hidrovia*, which rules would apply to preventive measures to be taken and to the liability of the ship and cargo owners?

¹ Secretary of the Argentine MLA and Director of the Editing Committee of the *Revista de Estudios Marítimos* (Magazine of Maritime Studies), Vicepresident for Argentina of the Instituto Iberoamericano de Derecho Marítimo, Full Professor of Maritime, Air and Spatial Law in the School of Juridic and Social Sciences of the Museo Social Argentino University, and Full Professor of Marine Insurance Law in the Naval University Institute of the Argentine Navy. He writes and lectures frequently, both in Argentina and abroad, on maritime issues, especially the need for uniformity in both domestic and international maritime law in environmental aspects. He has written three books –two of them in cooperation with other authors- on maritime and marine insurance law and a great number of articles and commentaries. He has also been practicing in the maritime law field for 30 years, specializing on marine insurance, collision, salvage, shipbuilding and sale, and general average. He is presently Name Partner of the Law Firm Ruggiero, Radovich & Fernandez Llorente, of Buenos Aires.

The Agreement on Fluvial Transport of the Hidrovia² rules matters such as freedom of navigation, equality of opportunities of the countries, the Hidrovia's Disponent Owners and other issues related to Public Law. However, nothing is said in relation to oil pollution.

In the Additional Protocol to the said Agreement related to Insurance, it is ruled that any shipowner who carries noxious substances or hydrocarbons shall take a policy covering the cleaning costs of waters and shores originated by pollution incidents (Section 3). Consequently, it should be noted that damages caused to property different from cleaning costs need not be obligatorily covered.

But leaving temporarily aside the question of the insurance coverage, which rules would apply to a pollution incident?

Among these States, only Argentina and Uruguay have ratified the 1992 CLC and Fund Conventions. As it is known, these Conventions establish the strict liability of the Owner of the vessel (Section 3, CLC Conv), canalized, limited (Section 5, CLC Conv.) and the mandatory insurance for tankers carrying over 2,000 tons of hydrocarbons (Section 7, CLC Conv).

Moreover, the cost of preventive measures taken to avoid or diminish a pollution event is covered (Sections. 1. 6. b and 7. and 5.8, CLC Conv.). This latter issue is of high importance because as regards the countries that are part of the *Hidrovia* Agreement, the equipment and budget of the Coast Guards is limited and, therefore, it is very important to encourage shipowners to take measures to avoid or minimize the damages that are costly. If shipowners know that the money spent could be recovered from the Convention/Fund, they will be encouraged to carry out any preventive measure.

Nonetheless, the scope of application of the CLC and Fund Conventions in the Hidrovia is very limited. First of all, only two of the Member States of the Programme ratified the said international conventions. Secondly, the Conventions only apply to sea going vessels (Section. 1.1, CLC Conv.), and therefore the brown waters vessels and the convoys composed of Barges and Pusher tugs will not be covered in any circumstance. Thirdly, these conventions only apply to tankers carrying persistent hydrocarbons, and therefore all other vessels and cargo would not be covered.

Some of the Member States of the *Hidrovia* have ratified the 1940 International Commercial Navigation Montevideo Treaty. This treaty applies to maritime and brown waters navigation and also to aero navigation. This is an instrument prepared according to the conflict of law method. We mean that it offers no substantial rules, but indicates which national law would apply to some obligations, contracts and liabilities. For instance, Section 12 rules that salvage rendered in jurisdictional waters of a State would be ruled by the

² Approved by Argentina through Law 24385, enacted in October 1994.

coastal State Law. If salvage were rendered in international waters – not applicable to the *Hidrovia* – the law of the flag of the salvor vessel would apply.

Upon reviewing the whole text of the 1940 International Commercial Navigation Montevideo Treaty, we must conclude that nothing is said in relation to pollution caused by hydrocarbons or by HNS. Consequently, we have to study the legal regime that would apply in each separate country. As we have highlighted above, as Argentina and Uruguay ratified the 1992 CLC and Fund Conventions, these Conventions – which supersede domestic law – would apply if the requirements established in those instruments were complied with. Otherwise, regional or national legislation would apply.

The Bunkers Convention, which is in force, was not ratified by any of the Member States of the *Hidrovia* Programme and only applies to sea going vessels (Section 1.1) For the reasons we stated above, we must conclude that the CLC and Fund Conventions would not cover many pollution incidents in the *Hidrovia*. Therefore, which law would apply to a pollution incident?

The Additional Protocol to the Agreement of Fluvial Transport in the *Hidrovia* deals with the reduction and control of water pollution caused by vessels and their operation in the *Hidrovia* but, once again, no rule related to the pollution liability is included therein.

Which would be the liabilities of vessels and cargo owners in a pollution incident in the *Hidrovia*?

Argentina

There was no express regulation of pollution liability caused by hydrocarbons carried by water before the 1992 CLC/Fund Conventions were ratified. Notwithstanding, legal authors³ and the Courts generally considered that the liability was strict and based on the risk of the thing.⁴

³ Chami, Diego “*Derrame de Hidrocarburos: Problemática en nuestro país*” (“Spill of Hydrocarbons: the matter in our country”), in *Revista de Estudios Marítimos*, Buenos Aires, N° 48, March 1994, page 31. Room III of the Federal Civil and Commercial Court of Appeals decided in 1986, *in re* “Sulfacid S.A.I.F.I.C. v/Master and/or Others M/V RIO BRAVO” (cause N° 4428) that the pollution issue shall be ruled by the Navigation Law rather than by the Civil Code, but the pollution in this case was caused by a collision, and it is widely agreed that liability in the case of collisions is based on negligence. See Ray, J. D., “*Derecho de la Navegación y Comercio Exterior*” (“Shipping Law and Foreign Trade”), Buenos Aires, Abeledo Perrot, 1997, V.III, page 49. But this judgment is an isolated one, and most of the decisions applied the strict liability based on Art. 1113 Civil Code.

⁴ Article 1113 of the Civil Code establishes that the owner or guardian of a risky thing is strictly and integrally liable for damages caused to third parties, and the same principle is adopted by Law 24051, related to dangerous residues. Under the regime of the Civil Code, the owner or guardian of a risky thing may exonerate his/her liability proving the fault of the victim or of a third party for whom he/she shall not respond, but Section 47 of Law 24051 added that the owner or guardian shall only be exonerated for the act of a third party for whom he/she shall not respond if the said act could not be avoided taking the necessary measures according to the circumstances.

Pollution liability is strict in Argentina as regards third parties⁵, but when the spill is caused by a nautical accident like a collision, the fault as regards the collision shall be taken into account (Sections 358 to 360, Navigation Law)⁶.

Argentina has not ratified the 1976 London Convention on Limitation of Liability for Maritime Claims (LLMC), but our Navigation Law, enacted in 1973, contains a general limitation system in favour of Owners and Disponent Owners⁷.

In Argentina, a shipowner may limit his/her liability to the value of the vessel at the end of the voyage, plus freight earned and credits born during the voyage (Section 175, Navigation Law). The registered Owner – not a Disponent Owner – may alternatively abandon the vessel to the creditors, adding the sums corresponding to freight earned and credits born during the voyage. This limitation is applicable to pollution claims.

Unlike the 1976 London LLMC Convention, which requires wilful intent or recklessness to exclude the right to limitation, in Argentina the Owner will lose the right to limitation even if he/she acted negligently.

If the vessel is lost, normally no indemnification could be obtained from her owner – unless he/she was personally guilty in respect of the incident – for damages other than injuries or death. In this latter case, a fund to afford those damages is imposed by law. For instance, in the case of a 2,000 Moorson tons vessel the limitation fund would be of about USD 1,400,000 and in the case of a 10,000-Ton⁸ vessel the fund would be of about USD 6,700,000⁹. These figures are very low compared with the limitation fund of the 1992 CLC and Fund and HNS Conventions.

We have to highlight that if the vessel is lost, no damage caused by pollution could be recovered because the fund only applies to personal damages, not to material damages.

Additionally, Law 22190 rules that Owners and Disponent Owners of a vessel that caused pollution are strictly liable for any cleaning cost (Section

⁵ See the precedent note.

⁶ See case “Sulfacid” referred in Note 2.

⁷ According to Section 181 of the Navigation Law, the limitation will also be in favour of the carrier, including the time charterer in our opinion, and the Master and the crew.

⁸ The tonnage taken into account is a volume measure, similar to the system set forth in the 1969 London Tonnage Convention.

⁹ These figures were obtained in accordance with Sections 175 and 182 of the Navigation Law and taking into account the London Stock quotation of the troy ounce of fine gold on January 21st 2010. Therefore:

a) Fine gold content of one argentine gold: 1,4516 grammes of gold

b) Gold Argentine Pesos applicable: 13 per ton measures

c) Value of the troy ounce in the London stock Exchange : USD 1104

Gold grammes x 1104 = limitation of 51.52 USD

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14), but these parties may lodge claims with a view to recover the amounts paid against the liable persons.

What would the situation of the owner of the cargo be? There is a general agreement among legal authors that the liability of the cargo owner is strict and that no limitation is acceptable¹⁰.

Coincidentally, a leading case decided by the Federal Civil and Commercial Court of Appeals of Buenos Aires before the 1992 CLC/Fund Conventions were ratified ruled that whilst the shipowner could limit his/her liability, the cargo owner is strict and integrally liable, even if the cargo owner is also the shipowner¹¹.

The General Environmental Law N° 25675 was enacted in November 2002, and among other issues, it rules the liability for collective incidence environmental damage. It establishes that the party responsible for such damage will have to bear the cost of the compensation without any limitation and under strict liability (Section 28). The only acceptable exoneration causes are exclusive negligence of the victim or of a third party for whom the responsible party shall not respond, provided that the liable person had previously carried out all the reasonable measures to prevent the environmental damage (Section 29). If two or more parties contributed in the causation of the environmental damage, they will be jointly liable *in solidum*, unless they could demonstrate the proportion of liability (Section 31). Any party who may originate by his activity an environmental damage of collective incidence shall have a proper insurance covering that risk (Section 22).

It is clear that any claim for economic losses or for environmental damage other than environmental damage of collective incidence is out of the scope of the General Environmental Law (hereinafter referred to as "GEL"). But the issue that could arise is what happens as regards pollution cases related to vessels that cause environmental damage of collective incidence. May the Owner rely on the limitation system of the Argentine Navigation Law or the limitation would not be acceptable as it is ruled by the GEL?

We think that if a pollution incident affecting waters or territory of Argentina occurs, and it is not covered by the CLC/Fund Conventions, the cargo owner will be strictly liable without any possibility of limitation. The shipowner would also be strictly liable but probably he/she could limit his/her liability in respect of any pollution claim if it is decided that the Navigation Law supersedes the General Environmental Law, or he may limit his/her

¹⁰ See note 3 above. The limitation of liability of the Navigation Law does not apply to cargo owners, whose liability is ruled by the Civil Code. As the hydrocarbon could be deemed a risky thing, the regime for such type of things should apply to damages caused by spilled oil.

¹¹ Case N° 1402/93 "Y.P.F. s/Incidente Shell Cia. Arg. de Petróleo S.A.", decided on December 16th, 1993.

liability in respect of any claim excluding the environmental damage of collective incidence, if the GEL supersedes the Navigation Law.

Bolivia

Bolivia has not ratified the Fund Conventions but, curiously, the country ratified in 1999 the 1984 Protocol modifying the 1969 CLC¹². This Protocol never entered into force.

We said “curiously” because in 1999 they could have ratified the 1992 CLC and Fund Conventions, and the Preamble of the 1992 Protocol expressly states that the 1984 Protocol never entered into force.

The carrier by water is in principle liable for any pollution damage caused by the cargo carried under his/her care¹³, but according to our Bolivian colleagues this liability could be extended to cargo owners based on the risk of the thing theory.

When the owner of the cargo is liable, that liability is strict¹⁴.

In principle, the liability for pollution is unlimited, but it is reported that through a contract approved by the National Hydrocarbons Agency and by the Ministry of Environment and Water the liability of the owners of the vessel and of the product could be limited in practice. This limitation is only valid among the parties to the contract and will not affect rights of third parties damaged by the pollution.

According to the information provided, Bolivian Authorities only require the International Oil Pollution Prevention Certificate to authorize navigation in the *Hidrovia*, but no evidence of P&I insurance is asked for. The Ministry of Environment and Water requires evidence of an environmental insurance to issue an administrative license to navigate to any vessel or barge that carries hydrocarbons.

We would like to thank our colleagues Rodrigo Rivera and Mauricio Dalman for their valuable cooperation.

Brazil

Brazil ratified the 1969 CLC but neither its modifications nor the Fund Conventions. Notwithstanding such ratification, it is doubtful whether the

¹² Through Law Number 1957.

¹³ Section 947 of the Bolivian Commercial Code reads: *Art. 947.- (RESPONSABILIDAD DEL TRANSPORTADOR). El transportador es responsable de las cosas o mercaderías entregadas para su transporte, desde el momento en que las reciba hasta que las entregue al destinatario en el lugar; forma y tiempo estipulado en la carta de porte, guía o conocimiento de embarque. Ninguna cláusula puede reducir la responsabilidad del transportador, salvo lo dispuesto en el artículo siguiente.*

¹⁴ Section 998 of the Bolivian Civil Code reads: *Artículo 998.- Quien en el desempeño de una actividad peligrosa ocasiona a otro un daño, está obligado a la indemnización si no prueba la culpa de la víctima.*

Convention would be applied to a pollution case because most of the legal authors and the precedents state that the limitation of liability is against the 1988 Constitution. Most of the legal authors believe that the adoption of the 1988 Constitution derogated the ratification of the 1969 CLC. The said implicit derogation would affect all the aspects of the international instrument, not only the limitation of liability. Thus, the channelling of liability would no longer be in force and any liable party could be sued.

There are no precedents related to the maritime field, but the Federal Supreme Court ruled that the limitation of liability set forth in international conventions related to air carriage is null and void.

It is important to highlight that recently Brazil enacted a law that authorizes the limitation of liability of land carriers¹⁵.

In case of pollution caused by a convoy, the registered and disponent Owners, the Owners of the cargo and any other intervening party will be strictly liable¹⁶, in solidum¹⁷, and without limitation of liability¹⁸. Further recovery actions among the liable parties are admitted.

There are rules that apply to internal navigation that establish that any vessel navigating such waters should have a contingency plan¹⁹.

Brazilian Authorities do ask the vessels sailing the Hidrovia to have an insurance certificate.

¹⁵ Ley 11.442, February 5th, 2007. According to Article 14 the carrier will have a liability limitation related to the value declared by the shipper, plus freight and insurance costs. If no value were declared, limitation will amount to 2 DEGs per kilogram. In case of delay not regulated in the contract, damages will be limited to the freight value as per Article 15.

¹⁶ **Ley 6.938/1981**, Art. 14, § 1º: Sem obstar a aplicação das penalidades previstas neste artigo, é o poluidor obrigado, **independentemente da existência de culpa**, a indenizar ou reparar os danos causados ao meio ambiente e a terceiros, afetados por sua atividade. O Ministério Público da União e dos Estados terá legitimidade para propor ação de responsabilidade civil e criminal, por danos causados ao meio ambiente; **Código Civil, Art. 927**. Aquele que, por ato ilícito (arts. 186 e 187), causar dano a outrem, fica obrigado a repará-lo. Parágrafo único. Haverá obrigação de reparar o dano, **independentemente de culpa**, nos casos especificados em lei, ou quando a atividade normalmente desenvolvida pelo autor do dano implicar, por sua natureza, risco para os direitos de outrem.

Código Civil, Art. 932. São também responsáveis pela reparação civil: (...) III - o empregador ou comitente, por seus empregados, serviçais e prepostos, no exercício do trabalho que lhes competir, ou em razão dele; (...) **Art. 933**. As pessoas indicadas nos incisos I a V do artigo antecedente, **ainda que não haja culpa de sua parte**, responderão pelos atos praticados pelos terceiros ali referidos.

¹⁷ **Ley 6.938/1981, Art. 3º** - Para os fins previstos nesta Lei, entende-se por: (...) IV - poluidor, a pessoa física ou jurídica, de direito público ou privado, **responsável, direta ou indiretamente**, por atividade causadora de degradação ambiental; **Código Civil, Art. 932**. São também responsáveis pela reparação civil: (...) III - **o empregador ou comitente**, por seus empregados, serviçais e prepostos, no exercício do trabalho que lhes competir, ou em razão dele.

¹⁸ Section 944 Civil Code.

¹⁹ “Normas da Autoridade Marítima para Embarcações Empregadas na **Navegação Interior**” (NORMAM-02/DPC — “Portaria” n. 85, de 14 de outubro de 200, de la “Diretoria de Portos e Costas”) ponto 0522.e.1.

I would like to thank my Brazilian colleague Jorge Rojas Carro for his kind cooperation.

Paraguay

Paraguay has not ratified any of the CLC/Fund Conventions. The Constitution of 1992 incorporated rules aimed to the protection of the environment²⁰ and several laws were enacted with a view to ensure it.

The carrier, the cargo owners and any person connected to the spill or pollution incident are strictly liable in solidum²¹ and are not allowed to limit their liability.

The Authorities for any environmental damage, including the spills in lakes and rivers are, according to Law N° 1561/2000, the Environmental Secretary together with the Environmental Attorney's Office. The latter acts before the Judiciary. The Paraguayan Coast Guard (called Prefectura General Naval) follows their instructions and acts as Environmental Police.

The Secretary and the Attorney's Office apply and prosecute the fines for pollution and charges for cleaning costs against the Shipowners or Disponent Owners and also against producers of hazardous wastes, where applicable.

The Paraguayan Coast Guard requires evidence of P&I insurance to allow navigation of vessels, Pushers and Barges. Most of the ports and terminals also require that evidence to allow the vessels carrying hydrocarbons to accede to their installations.

The information was provided by my Paraguayan colleague Santiago Brizuela Servín, who is also Vice-president for Paraguay for the IIDM. I am grateful to him.

Uruguay

Uruguay ratified the 1992 CLC and Fund Conventions in April 1997, after the oil spill of the M/T "SAN JORGE" polluted its coasts.

Section 1050 of the Commercial Code, establishes that the Owner of a vessel may limitate his/her liability abandoning her to the creditors (the so called French System), adding the freights earned in the relevant voyage. To

²⁰ Art. 8°: "De la protección ambiental: Las actividades susceptibles de producir alteración ambiental serán reguladas por la Ley. Asimismo, esta podrá restringir o prohibir aquellas que califique peligrosas. Se prohíbe la fabricación, el montaje la importación, la comercialización, la posesión o el uso de armas nucleares, químicas y biológicas, así como la introducción al país de residuos tóxicos. La Ley podrá extender esta prohibición a otros elementos peligrosos; asimismo regulará el tráfico de recursos genéticos y de su tecnología, precautelando los intereses nacionales. El delito ecológico será definido y sancionado por la Ley. TODO DAÑO AL AMBIENTE IMPORTARÁ LA OBLIGACIÓN DE RECOMPONER E INDEMNIZAR"

²¹ According to Sections 450 and 508 of the Paraguayan Civil Code.

avoid any contradiction between the CLC/Fund Conventions and domestic law, Section 2 of the ratifying law establishes that Section 1050 of the Commercial Code will not apply in the cases covered by the said international instruments²².

A long time before the CLC/Fund Conventions were ratified, in 1979, Uruguay enacted Law N° 16688, called “Prevention and Surveillance Regime”, which establishes a strict and in solidum liability of Owners, Disponent Owners of vessels or other floating devices, aircrafts and shore and off-shore crafts or installations, fines, cleaning costs and other charges following an spill.

Pursuant to Section 12 of the Law, security shall be provided by the supposedly liable parties. If such guarantee is not complied with, the vessel, aircraft or off-shore craft may be arrested and their departure from Uruguayan Ports will not be accepted by the Authority.

It was reported that the Uruguayan Coast Guard continues applying this regime even when the legal authors consider that it was partially derogated by the ratification of the international conventions.

It was also reported that the Uruguayan Cost Guard does require evidence of Hull & Machinery, P&I and Civil Liability Insurance to the vessel sailing their waters. The cover shall include wreck removal in case of total loss. This requirement is based on Section 11 of Law N° 11721²³, which was enacted before the Additional Protocol to the *Hidrovia* Agreement related to Insurance was signed.

I thank the valuable cooperation of the Uruguayan lawyer Carlos E. Dubra and of the P&I Correspondent in Montevideo Capt. Alejandro Laborde Fonrat.

Conclusions

Upon having reviewed the international and domestic law regarding preventive measures and liability for pollution damage in the countries that are parties to the *Hidrovia* Programme, we may conclude that:

- (i) The scope of application of the CLC/Fund Conventions to spills produced in the *Hidrovia Paraguay-Paraná* is very limited, if any;
- (ii) The victims lack a system of prompt and guaranteed indemnification;
- (iii) The liability regimes of the concerned countries for ship and cargo owners are diverse;

²² Law N° 1,820, enacted in April 1997.

²³ “Las embarcaciones extranjeras que naveguen aguas de jurisdicción nacional deberán poseer seguros de casco, responsabilidad civil y protección e indemnización, incluyendo remoción de restos.”

Miscellaneous

- (iv) Some countries do admit limitation of liability for shipowners, but most of them do not accept it for cargo owners;
- (v) No funding to afford preventive measures to avoid or to reduce the spill is contemplated in any of the countries;
- (vi) Insurance requirements are not uniform among the concerned countries;
- (vii) Although most of the countries maintain that their authorities require evidence of P&I insurance to sail the *Hidrovia*, problems could arise in practice considering the application of the “pay to be paid” rule and the existence of companies that provide P&I cover lacking the solvency, the pooling agreement and the high reinsurance cover of the Members of the International Group of P&I Clubs;
- (viii) We think that the Authorities should work on the construction of a regime covering pollution damage in the *Hidrovia* based on the CLC/Fund and HNS Conventions, which should guarantee proper compensation to the affected parties plus restoration of the environment, and compensation of preventive measures;
- (ix) In the meantime, evidence of insurance covering pollution risks should be restricted to the P&I Clubs members of the International Group, with express waiver of the “pay to be paid” rule.

POWER POINT PRESENTATIONS

The following PowerPoint presentations were made at the Colloquium. Because of their nature they are not reproduced here, but can be retrieved at **<http://www.cmi2010buenosaires.com.ar/en/colloquium-documentation>**:

Rotterdam Rules General Presentation,

by KATE LANNAN

Obligaciones y responsabilidad del porteador,

by MANUEL ALBA FERNANDEZ

**Paraguay-Paraná Hidrovía. Pollution prevention and control.
Institutional and environmental conditions,**

by ALDO BRANDANI

PART III

**Status of ratifications to
Maritime Conventions**

**Etat des ratifications
aux conventions de Droit Maritime**

**ETAT DES
RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS INTERNATIONALES
DE DROIT MARITIME DE BRUXELLES**

(Information communiquée par le Ministère des Affaires Etrangères,
du Commerce Extérieur et de la Coopération au Développement
de Belgique, dépositaire des Conventions).

Notes de l'éditeur

(1) - Les dates mentionnées sont les dates du dépôt des instruments. L'indication (r) signifie ratification, (a) adhésion.

(2) - Les Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

**STATUS OF THE
RATIFICATIONS OF AND ACCESSIONS
TO THE BRUSSELS INTERNATIONAL MARITIME
LAW CONVENTIONS**

(Information provided by the Ministère des Affaires Etrangères,
du Commerce Extérieur et de la Coopération au Développement de Belgique,
depository of the Conventions).

Editor's notes:

(1) - The dates mentioned are the dates of the deposit of instruments. The indication (r) stands for ratification, (a) for accession.

(2) - The States whose names are followed by an asterisk have made reservations. The text of such reservations is published, in a summary form, at the end of the list of ratifications of each convention.

(3) - The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

**Convention internationale pour
l'unification de certaines
règles en matière
d'Abordage
et protocole de signature**

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

**International convention
for the unification of certain
rules of law relating to
Collision between vessels
and protocol of signature**

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913
Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Bahamas	(a)	3.II.1913
Belize	(a)	3.II.1913
Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
Cape Verde	(a)	20.VII.1914
China		
Hong Kong⁽¹⁾	(a)	1.II.1913
Macao⁽²⁾	(r)	25.XII.1913
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
Denmark	(r)	18.VI.1913
Dominican Republic	(a)	1.II.1913
Egypt	(a)	29.XI.1943
Estonia	(a)	15.V.1929
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Abordage 1910**Collision 1910*

France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	29.IX.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913
Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966
Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914
Kenya	(a)	1.II.1913
Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Libyan Arab Jamahiriya	(a)	9.XI.1934
Macao	(a)	20.VII.1914
Madagascar	(r)	1.II.1913
Malaysia	(a)	1.II.1913
Malta	(a)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913
Newfoundland	(a)	11.III.1914
New Zealand	(a)	19.V.1913
Nicaragua	(r)	18.VII.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
Papua New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	2.VI.1922
Portugal	(r)	25.XII.1913
Romania	(r)	1.II.1913
Russian Federation⁽³⁾	(r)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913

⁽³⁾ Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.

Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tome and Principe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	16.XI.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
Sri-Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
<i>(denunciation 19 December 1995)</i>		
Switzerland	(a)	28.V.1954
Timor	(a)	20.VII.1914
Tonga	(a)	13.VI.1978
Trinidad and Tobago	(a)	1.II.1913
Turkey	(a)	4.VII.1913
Tuvalu	(a)	1.II.1913
United Kingdom	(r)	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos & Turks Islands.		
Saint Helena, Wei-Hai-Wei	(a)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967

**Convention internationale
pour l'unification de certaines
règles en matière**

**d'Assistance et de sauvetage
maritimes
et protocole de signature**

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

**International convention
for the unification of
certain rules of law
relating to**

**Assistance and salvage at
sea
and protocol of signature**

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Algeria	(a)	13.IV.1964
Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913

*Assistance et sauvetage 1910**Assistance and salvage 1910*

Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Bahamas	(a)	1.II.1913
Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Belize	(a)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
<i>(denunciation 22.XI.1994)</i>		
Cape Verde	(a)	20.VII.1914
China		
Hong Kong⁽¹⁾	(a)	1.II.1913
Macao⁽²⁾	(r)	25.VII.1913
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
<i>(denunciation 16.III.2000)</i>		
Denmark	(r)	18.VI.1913
Dominican Republic	(a)	23.VII.1958
Egypt	(a)	19.XI.1943
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923
France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	15.X.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Salvage Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966
<i>(denunciation 11.VII.2000)</i>		
Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914
Kenya	(a)	1.II.1913
Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Malaysia	(a)	1.II.1913
Madagascar	(r)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913
Newfoundland	(a)	12.XI.1913
New Zealand	(a)	19.V.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
<i>(denunciation 9.XII.1996)</i>		
Oman	(a)	21.VIII.1975
Papua - New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	15.X.1921
Portugal	(r)	25.VII.1913
Romania	(r)	1.II.1913
Russian Federation	(a)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913
Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tomé and Príncipe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	13.X.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
<i>(denunciation 19.I.2006)</i>		
Sri Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974

Assistance et sauvetage 1910 - Protocole 1967 *Assistance and salvage - Protocol 1967*

Timor	(a)	20.VII.1914
Tonga	(a)	13.VI.1978
Trinidad and Tobago	(a)	1.II.1913
Turkey	(a)	4.VII.1955
Tuvalu	(a)	1.II.1913
United Kingdom ⁽³⁾	(r)	1.II.1913
Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena	(a)	1.II.1913
<i>(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)</i>		
United States of America	(r)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967

**Protocole portant modification
de la convention internationale
pour l'unification de
certaines règles en matière
d'Assistance et de sauvetage
maritimes**

**Signée a Bruxelles, le 23
septembre 1910**

Bruxelles, 27 mai 1967
Entré en vigueur: 15 août 1977

**Protocol to amend
the international convention for
the unification of certain
rules of law relating to
Assistance and salvage at
sea**

**Signed at Brussels on 23rd
September, 1910**

Brussels, 27th May 1967
Entered into force: 15 August 1977

Austria	(r)	4.IV.1974
Belgium	(r)	11.IV.1973
Brazil	(r)	8.XI.1982
Croatia	(r)	8.X.1991
<i>(denunciation 16.III.2000)</i>		
Egypt	(r)	15.VII.1977
Jersey, Guernsey & Isle of Man	(a)	22.VI.1977
Papua New Guinea	(a)	14.X.1980
Slovenia	(a)	13.X.1993
Syrian Arab Republic	(a)	1.VIII.1974
United Kingdom	(r)	9.IX.1974

⁽³⁾ Including Jersey, Guernsey and Isle of Man.

**Convention internationale pour
l'unification de certaines
règles concernant la
Limitation de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

**International convention for
the unification of certain
rules relating to the
Limitation of the liability
of owners
of sea-going vessels
and protocol of signature**

Brussels, 25th August 1924
Entered into force: 2 June 1931

Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Denmark <i>(denunciation - 30.VI.1983)</i>	(r)	2.VI.1930
Dominican Republic	(a)	23.VII.1958
Finland <i>(denunciation - 30.VI.1983)</i>	(a)	12.VII.1934
France <i>(denunciation - 26.X.1976)</i>	(r)	23.VIII.1935
Hungary	(r)	2.VI.1930
Madagascar	(r)	12.VIII.1935
Monaco <i>(denunciation - 24.I.1977)</i>	(r)	15.V.1931
Norway <i>(denunciation - 30.VI.1963)</i>	(r)	10.X.1933
Poland	(r)	26.X.1936
Portugal	(r)	2.VI.1930
Spain <i>(denunciation - 4.I.2006)</i>	(r)	2.VI.1930
Sweden <i>(denunciation - 30.VI.1963)</i>	(r)	1.VII.1938
Turkey	(a)	4.VII.1955

**Convention internationale pour
l'unification de certaines
règles en matière de
Connaissance
et protocole de signature
"Règles de La Haye 1924"**

Bruxelles, le 25 août 1924
Entrée en vigueur: 2 juin 1931

**International convention for
the unification of certain
rules of law relating to
Bills of lading
and protocol of signature
"Hague Rules 1924"**

Brussels, 25th August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	(a)	13.IV.1964
Angola	(a)	2.II.1952
Antigua and Barbuda	(a)	2.XII.1930
Argentina	(a)	19.IV.1961
Australia*	(a)	4.VII.1955
<i>(denunciation - 16.VII.1993)</i>		
Norfolk	(a)	4. VII.1955
Bahamas	(a)	2.XII.1930
Barbados	(a)	2.XII.1930
Belgium	(r)	2. VI.1930
Belize	(a)	2.XI.1930
Bolivia	(a)	28.V.1982
Cameroon	(a)	2.XII.1930
Cape Verde	(a)	2.II.1952
China		
Hong Kong⁽¹⁾	(a)	2.XII.1930
Macao⁽²⁾	(r)	2.II.1952
Cyprus	(a)	2.XII.1930
Croatia	(r)	8.X.1991
Cuba*	(a)	25.VII.1977

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Denmark*	(a)	I.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Dominican Republic	(a)	2.XII.1930
Ecuador	(a)	23.III.1977
Egypt	(a)	29.XI.1943
<i>(denunciation - 1.XI.1997)</i>		
Fiji	(a)	2.XII.1930
Finland	(a)	1.VII.1939
<i>(denunciation – 1.III.1984)</i>		
France*	(r)	4.I.1937
Gambia	(a)	2.XII.1930
Germany	(r)	1.VII.1939
Ghana	(a)	2.XII.1930
Goa	(a)	2.II.1952
Greece	(a)	23.III.1993
Grenada	(a)	2.XII.1930
Guyana	(a)	2.XII.1930
Guinea-Bissau	(a)	2.II.1952
Hungary	(r)	2.VI.1930
Iran	(a)	26.IV.1966
Ireland*	(a)	30.I.1962
Israel	(a)	5.IX.1959
Italy	(r)	7.X.1938
<i>(denunciation – 22.XI.1984)</i>		
Ivory Coast*	(a)	15.XII.1961
Jamaica	(a)	2.XII.1930
Japan*	(r)	1.VII.1957
<i>(denunciation – 1.VI.1992)</i>		
Kenya	(a)	2.XII.1930
Kiribati	(a)	2.XII.1930
Kuwait*	(a)	25.VII.1969
Lebanon	(a)	19.VII.1975
<i>(denunciation - 1.XI.1997)</i>		
Malaysia	(a)	2.XII.1930
Madagascar	(a)	13.VII.1965
Mauritius	(a)	24.VIII.1970
Monaco	(a)	15.V.1931
Mozambique	(a)	2.II.1952
Nauru*	(a)	4.VII.1955
Netherlands*	(a)	18.VIII.1956
<i>(denunciation – 26.IV.1982)</i>		
Nigeria	(a)	2.XII.1930
Norway	(a)	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Papua New Guinea*	(a)	4.VII.1955
Paraguay	(a)	22.XI.1967
Peru	(a)	29.X.1964

Poland	(r)	4.VIII.1937
Portugal	(a)	24.XII.1931
Romania	(r)	4.VIII.1937
<i>(denunciation – 18.III.2002)</i>		
Sao Tomé and Principe	(a)	2.II.1952
Sarawak	(a)	3.XI.1931
Senegal	(a)	14.II.1978
Seychelles	(a)	2.XII.1930
Sierra-Leone	(a)	2.XII.1930
Singapore	(a)	2.XII.1930
Slovenia	(a)	25.VI.1991
Solomon Islands	(a)	2.XII.1930
Somalia	(a)	2.XII.1930
Spain	(r)	2.VI.1930
Sri-Lanka	(a)	2.XII.1930
St. Kitts and Nevis	(a)	2.XII.1930
St. Lucia	(a)	2.XII.1930
St. Vincent and the Grenadines	(a)	2.XII.1930
Sweden	(a)	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Switzerland*	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tanzania (United Republic of)	(a)	3.XII.1962
Timor	(a)	2.II.1952
Tonga	(a)	2.XII.1930
Trinidad and Tobago	(a)	2.XII.1930
Turkey	(a)	4.VII.1955
Tuvalu	(a)	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*	(r)	2.VI.1930
<i>(denunciation – 13.VI.1977)</i>		
Gibraltar	(a)	2.XII.1930
<i>(denunciation – 22.IX.1977)</i>		
Bermuda, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
<i>(denunciation 20.X.1983)</i>		
Anguilla	(a)	2.XII.1930
Ascension, Saint Helène and Dependencies	(a)	3.XI.1931
United States of America*	(r)	29.VI.1937
Zaire	(a)	17.VII.1967

Reservations

Australia

- a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.
- b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Cuba

Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

Denmark

...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:

- 1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
- 2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
- 3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

Egypt

...Nous avons résolu d'adhérer par les présentes à la dite Convention, et promettons de concourir à son application. L'Egypte est, toutefois, d'avis que la Convention, dans sa totalité, ne s'applique pas au cabotage national. En conséquence, l'Egypte se réserve le droit de régler librement le cabotage national par sa propre législation...

France

...En procédant à ce dépôt, l'Ambassadeur de France à Bruxelles déclare, conformément à l'article 13 de la Convention précitée, que l'acceptation que lui donne le Gouvernement Français ne s'applique à aucune des colonies, possessions, protectorats ou territoires d'outre-mer se trouvant sous sa souveraineté ou son autorité.

Ireland

...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.

Ivory Coast

Le Gouvernement de la République de Côte d'Ivoire, en adhérant à ladite Convention précise que:

- 1) Pour l'application de l'article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d'une livre or égale à deux livres sterling papier, au cours du change de l'arrivée du navire au port de déchargement.
- 2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la république de Côte d'Ivoire.

Japan

Statement at the time of signature, 25.8.1925.

Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:

- a) A l'article 4.

Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.

- b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.

Statement at the time of ratification

...Le Gouvernement du Japon déclare

- 1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention;
- 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et
- 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

Kuwait

Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.

The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

Nauru

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territory of Nauru; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Netherlands

...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de connaissance, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d'adhérer par les présentes, pour le Royaume en Europe, à ladite Convention, Protocole de signature, d'une manière définitive et promettons de

concourir à son application, tout en Nous réservant le droit, par prescription légale,

- 1) de préciser dans les cas prévus par l'article 4, par. 2 de c) à p) de la Convention, le porteur du connaissance peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par l'article 4, par. 2 a) de la Convention;
- 2) d'appliquer, en ce qui concerne le cabotage national, l'article 6 à toutes les catégories de marchandises, sans tenir compte de la restriction figurant au dernier paragraphe dudit article, et sous réserve:
 - 1) que l'adhésion à la Convention ait lieu en faisant exclusion du premier paragraphe de l'article 9 de la Convention;
 - 2) que la loi néerlandaise puisse limiter les possibilités de fournir des preuves contraires contre le connaissance.

Norway

...L'adhésion de la Norvège à la Convention internationale pour l'unification de certaines règles en matière de connaissance, signée à Bruxelles, le 25 août 1924, ainsi qu'au Protocole de signature y annexé, est donnée sous la réserve que les autres États contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne la Norvège:

- 1) La loi sur la navigation norvégienne continuera à permettre que dans le cabotage national les connaissances et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées ou soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
- 2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi norvégienne sur la navigation - le transport maritime entre la Norvège et autres États nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
- 3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome le 23 novembre 1933, ne seront pas affectées par cette Convention.

Papua New Guinea

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territories of Papua and New-Guinea; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the 1st paragraph of that Article.

Switzerland

...Conformément à l'alinéa 2 du Protocole de signature, les Autorités fédérales se réservent de donner effet à cet acte international en introduisant dans la législation suisse les règles adoptées par la Convention sous une forme appropriée à cette législation.

United Kingdom

...I Declare that His Britannic Majesty's Government adopt the last reservation in the additional Protocol of the Bills of Lading Convention. I Further Declare that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the territories over which his Britannic Majesty exercises a mandate to accede to this Convention under Article 13. "...In accordance with Article 13 of the above named Convention, I declare that the acceptance of the Convention given by His Britannic Majesty in the instrument of ratification deposited this day extends only to the United Kingdom of Great Britain and Northern Ireland and does not apply to any of His Majesty's Colonies or Protectorates, or territories under suzerainty or mandate.

United States of America

...*And whereas*, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, notwithstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:

Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, signée a Bruxelles le 25 août 1924
Règles de Visby

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Belgium**China****Hong Kong⁽¹⁾****Croatia****Denmark**

Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussels on 25 August 1924
Visby Rules

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

(r) 6.IX.1978**(r)** 1.XI.1980**(a)** 28.X.1998**(r)** 20.XI.1975

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

Ecuador	(a)	23.III.1977
Egypt*	(r)	31.I.1983
Finland	(r)	1.XII.1984
France	(r)	10.VII.1977
Georgia	(a)	20.II.1996
Germany	(a)	14.II.1979
Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Latvia	(a)	4.IV.2002
Lebanon	(a)	19.VII.1975
Lithuania	(a)	2.XII.2003
Netherlands*	(r)	26.IV.1982
Norway	(r)	19.III.1974
Poland*	(r)	12.II.1980
Russian Federation	(a)	29.IV.1999
Singapore	(a)	25.IV.1972
Sri-Lanka	(a)	21.X.1981
Sweden	(r)	9.XII.1974
Switzerland	(r)	11.XII.1975
Syrian Arab Republic	(a)	1.VIII.1974
Tonga	(a)	13.VI.1978
United Kingdom of Great Britain	(r)	1.X.1976
Bermuda	(a)	1.XI.1980
Gibraltar	(a)	22.IX.1977
Isle of Man	(a)	1.X.1976
British Antarctic Territories, Caimans, Caicos & Turks Islands, Falklands Islands & Dependencies, Montserrat, Virgin Islands (extension)	(a)	20.X.1983

Reservations

Egypt Arab Republic

La République Arabe d’Egypte déclare dans son instrument de ratification qu’elle ne se considère pas liée par l’article 8 dudit Protocole (cette déclaration est faite en vertu de l’article 9 du Protocole).

Netherlands

Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l’article 4, alinéa 2 de c) à p) de la Convention, le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).

Poland

Confirmation des réserves faites lors de la signature, à savoir: “La République Populaire de Pologne ne se considère pas liée par l’article 8 du présent Protocole”.

*Protocole DTS**SDR Protocol*

**Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissance telle qu'amendée par le Protocole de modification du 23 février 1968.
Protocole DTS**

Bruxelles, le 21 décembre 1979
Entrée en vigueur: 14 février 1984

**Protocol to amend the International Convention for the unification of certain rules relating to bills of lading as modified by the Amending Protocol of 23rd February 1968.
SDR Protocol**

Brussels, 21st December 1979
Entered into force: 14 February 1984

Australia	(a)	16.VII.1993
Belgium	(r)	7.IX.1983
China		
Hong Kong⁽¹⁾	(a)	20.X.1983
Croatia	(a)	28.X.1998
Denmark	(a)	3.XI.1983
Finland	(r)	1.XII.1984
France	(r)	18.XI.1986
Georgia	(a)	20.II.1996
Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Japan	(r)	1.III.1993
Latvia	(a)	4.IV.2002
Lithuania	(a)	2.XII.2003
Luxembourg	(a)	18.II.1991
Mexico	(a)	20.V.1994
Netherlands	(r)	18.II.1986
New Zealand	(a)	20.XII.1994
Norway	(r)	1.XII.1983
Poland*	(r)	6.VII.1984
Russian Federation	(a)	29.IV.1999
Spain	(r)	6.I.1982
Sweden	(r)	14.XI.1983
Switzerland*	(r)	20.I.1988
United Kingdom of Great-Britain and Northern Ireland	(r)	2.III.1982
Bermuda, British Antarctic Territories, Virgin Islands, Caimans, Falkland Islands & Dependencies, Gibraltar, Isle of Man, Montserrat, Caicos & Turks Island (extension)	(a)	20.X.1983

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the SDR Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 8 of the Protocol.

Reservations

Poland

Poland does not consider itself bound by art. III.

Switzerland

Le Conseil fédéral suisse déclare, en se référant à l'article 4, paragraphe 5, alinéa d) de la Convention internationale du 25 août 1924 pour l'unification de certaines règles en matière de connaissance, telle qu'amendée par le Protocole de modification du 23 février 1968, remplacé par l'article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:

La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des Etats Unis d'Amérique sur le marché des changes de Zürich. La contrevaieur en francs suisses d'un DTS est déterminée d'après ce cours du dollar et le cours en dollars DTS, calculé par le FMI. Se fondant sur ces valeurs, la BNS calcule un cours moyen du DTS qu'elle publiera dans son Bulletin mensuel.

**Convention internationale pour
l'unification de certaines
règles relatives aux
Privilèges et hypothèques
maritimes
et protocole de signature**

Bruxelles, 10 avril 1926
entrée en vigueur: 2 juin 1931

**International convention
for the unification of
certain rules relating to
Maritime liens and
mortgages
and protocol of signature**

Brussels, 10th April 1926
entered into force: 2 June 1931

(Translation)

Algeria	(a)	13.IV.1964
Argentina	(a)	19.IV.1961
Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Cuba*	(a)	21.XI.1983
Denmark	(r)	
<i>(denunciation – 1.III.1965)</i>		
Estonia	(r)	2.VI.1930
Finland	(a)	12.VII.1934
<i>(denunciation – 1.III.1965)</i>		
France	(r)	23.VIII.1935
Haiti	(a)	19.III.1965
Hungary	(r)	2.VI.1930
Iran	(a)	8.IX.1966
Italy*	(r)	7.XII.1949
Lebanon	(a)	18.III.1969
Luxembourg	(a)	18.II.1991

*Immunité 1926**Immunity 1926*

Madagascar	(r)	23.VIII.1935
Monaco	(a)	15.V.1931
Norway	(r)	10.X.1933
<i>(denunciation – 1.III.1965)</i>		
Poland	(r)	26.X.1936
Portugal	(a)	24.XII.1931
Romania	(r)	4.VIII.1937
Spain	(r)	2.VI.1930
Switzerland	(a)	28.V.1954
Sweden	(r)	1.VII.1938
<i>(denunciation – 1.III.1965)</i>		
Syrian Arab Republic	(a)	14.II.1951
Turkey	(a)	4.VII.1955
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

Reservations

Cuba

(Traduction) L'instrument d'adhésion contient une déclaration relative à l'article 19 de la Convention.

Italy

(Traduction) L'Etat italien se réserve la faculté de ne pas conformer son droit interne à la susdite Convention sur les points où ce droit établit actuellement:

– l'extension des privilèges dont question à l'art. 2 de la Convention, également aux dépendances du navire, au lieu qu'aux seuls accessoires tels qu'ils sont indiqués à l'art. 4;

– la prise de rang, après la seconde catégorie de privilèges prévus par l'art. 2 de la Convention, des privilèges qui couvrent les créances pour les sommes avancées par l'Administration de la Marine Marchande ou de la Navigation intérieure, ou bien par l'Autorité consulaire, pour l'entretien et le rapatriement des membres de l'équipage.

**Convention internationale pour
l'unification de certaines règles
concernant les**

**Immunités des navires
d'Etat**

Bruxelles, 10 avril 1926
et protocole additionnel

Bruxelles, 24 mai 1934
Entrée en vigueur: 8 janvier 1937

**International convention for the
unification of certain rules
concerning the**

**Immunity of State-owned
ships**

Brussels, 10th April 1926
and additional protocol

Brussels, May 24th 1934
Entered into force: 8 January 1937

(Translation)

Argentina

(a)

19.IV.1961

Belgium

(r)

8.I.1936

Brazil	(r)	8.I.1936
Chile	(r)	8.I.1936
Cyprus	(a)	19.VII.1988
Denmark	(r)	16.XI.1950
Estonia	(r)	8.I.1936
France	(r)	27.VII.1955
Germany	(r)	27.VI.1936
Greece	(a)	19.V.1951
Hungary	(r)	8.I.1936
Italy	(r)	27.I.1937
Luxembourg	(a)	18.II.1991
Libyan Arab Jamahiriya	(r)	27.I.1937
Madagascar	(r)	27.I.1955
Netherlands	(r)	8.VII.1936
Curaçao, Dutch Indies		
Norway	(r)	25.IV.1939
Poland	(r)	16.VII.1976
Portugal	(r)	27.VI.1938
Romania	(r)	4.VIII.1937
<i>(denunciation – 21.IX.1959)</i>		
Somalia	(r)	27.I.1937
Sweden	(r)	1.VII.1938
Switzerland	(a)	28.V.1954
Suriname	(r)	8.VII.1936
Syrian Arab Republic	(a)	17.II.1960
Turkey	(a)	4.VII.1955
United Arab Republic	(a)	17.II.1960
United Kingdom*	(r)	3.VII.1979
United Kingdom for Jersey, Guernsey and Island of Man	(a)	19.V.1988
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

Reservations

United Kingdom

We reserve the right to apply Article 1 of the Convention to any claim in respect of a ship which falls within the Admiralty jurisdiction of Our courts, or of Our courts in any territory in respect of which We are party to the Convention. We reserve the right, with respect to Article 2 of the Convention to apply in proceedings concerning another High Contracting Party or ship of another High Contracting Party the rules of procedure set out in Chapter II of the European Convention on State Immunity, signed at Basle on the Sixteenth day of May, in the Year of Our Lord One thousand Nine hundred and Seventy-two.

In order to give effect to the terms of any international agreement with a non-Contracting State, We reserve the right to make special provision:

(a) as regards the delay or arrest of a ship or cargo belonging to such a State, and (b) to prohibit seizure of or execution against such a ship or cargo.

*Compétence civile 1952**Civil jurisdiction 1952*

**Convention internationale pour
l'unification de certaines règles
relatives à la
Compétence civile
en matière d'abordage**

Bruxelles, 10 mai 1952
Entrée en vigueur:
14 septembre 1955

**International convention for the
unification of certain rules
relating to
Civil jurisdiction
in matters of collision**

Brussels, 10th May 1952
Entered into force:
14 September 1955

Algeria	(a)	18.VIII.1964
Antigua and Barbuda	(a)	12.V.1965
Argentina	(a)	19.IV.1961
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
China		
Hong Kong⁽¹⁾	(a)	29.III.1963
Macao⁽²⁾	(a)	23.III.1999
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica*	(a)	13.VII.1955
Cote d'Ivoire	(a)	23.IV.1958
Croatia*	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	10.X.1974
France	(r)	25.V.1957

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999.

With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada	(a)	12.V.1965
Guinea	(a)	23.IV.1958
Guyana	(a)	29.III.1963
Haute Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland	(a)	17.X.1989
Italy	(r)	9.XI.1979
Khmere Republic*	(a)	12.XI.1959
Kiribati	(a)	21.IX.1965
Luxembourg	(a)	18.II.1991
Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
Mauritius	(a)	29.III.1963
Morocco	(a)	11.VII.1990
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Poland	(a)	14.III.1986
Portugal	(r)	4.V.1957
Romania	(a)	28.XI.1995
Sarawak	(a)	29.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and Northern Ireland	(r)	18.III.1959
Gibraltar	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Caiman Islands, Montserrat	(a)	12.V.1965
Anguilla, St. Helena	(a)	12.V.1965
Turks Isles and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and Dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

Reservations

Costa-Rica

(Traduction) Le Gouvernement de la République du Costa Rica, en adhérant à cette Convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.

En conséquence, la République du Costa Rica ne reconnaît pas comme obligatoires les literas b) et c) du premier paragraphe de l'article premier."

"Conformément au Code du droit international privé approuvé par la sixième Conférence internationale américaine, qui s'est tenue à La Havane (Cuba), le Gouvernement de la République du Costa Rica, en acceptant cette Convention, fait cette réserve expresse que, en aucun cas, il ne renoncera à sa compétence ou juridiction pour appliquer la loi costaricienne en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire costaricien.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "Le Gouvernement de la République Populaire Fédérative de Yougoslavie se réserve le droit de se déclarer au moment de la ratification sur le principe de "sistership" prévu à l'article 1^o lettre (b) de cette Convention.

Khmere Republic

Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon. En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1^o de l'article 1^o.

En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire khmère.

**Convention internationale
pour l'unification de
certaines règles
relatives à la**

**Compétence pénale
en matière d'abordage et
autres événements
de navigation**

Bruxelles, 10 mai 1952

Entrée en vigueur:
20 novembre 1955

**International convention
for the unification of
certain rules
relating to**

**Penal jurisdiction
in matters of collision
and other incidents
of navigation**

Brussels, 10th May 1952

Entered into force:
20 November 1955

Anguilla*

Antigua and Barbuda*

Argentina*

Bahamas*

Belgium*

(a) 12.V.1965

(a) 12.V.1965

(a) 19.IV.1961

(a) 12.V.1965

(r) 10.IV.1961

Belize*	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Burman Union*	(a)	8.VII.1953
Cayman Islands*	(a)	12.VI.1965
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
China		
Hong Kong⁽¹⁾	(a)	29.III.1963
Macao⁽²⁾	(a)	23.III.1999
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica*	(a)	13.VII.1955
Croatia*	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominica, Republic of*	(a)	12.V.1965
Egypt*	(r)	24.VIII.1955
Fiji*	(a)	29.III.1963
France*	(r)	20.V.1955
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany*	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada*	(a)	12.V.1965
Guyana*	(a)	19.III.1963
Guinea	(a)	23.IV.1958

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Penal Jurisdiction Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

The following declarations have been made by the Government of the People's Republic of China:

1. The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to observe the provisions of Article 1 of the Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Hong Kong Special Administrative Region.

2. In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Hong Kong Special Administrative Region.

(2) The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Compétence pénale 1952**Penal jurisdiction 1952*

Haiti	(a)	17.IX.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Italy*	(r)	9.XI.1979
Ivory Coast	(a)	23.IV.1958
Khmere Republic*	(a)	12.XI.1956
Kiribati*	(a)	21.IX.1965
Lebanon	(r)	19.VII.1975
Luxembourg	(a)	18.II.1991
Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
Mauritius*	(a)	29.III.1963
Montserrat*	(a)	12.VI.1965
Morocco	(a)	11.VII.1990
Netherlands*	(r)	
Kingdom in Europe, West Indies and Aruba	(r)	25.VI.1971
Niger	(a)	23.IV.1958
Nigeria*	(a)	7 XI.1963
North Borneo*	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Portugal*	(r)	4.V.1957
Romania	(a)	28.XI.1995
Sarawak*	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles*	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands*	(a)	21.IX.1965
Spain*	(r)	8.XII.1953
St. Kitts and Nevis*	(a)	12.V.1965
St. Lucia*	(a)	12.V.1965
St. Helena*	(a)	12.V.1965
St. Vincent and the Grenadines*	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Suriname	(r)	25.VI.1971
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	10.VII.1972
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga*	(a)	13.VI.1978
Tuvalu*	(a)	21.IX.1965
United Kingdom of Great Britain and Northern Ireland*	(r)	18.III.1959
Gibraltar	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla	(a)	12.V.1965
Turks Islands and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Viet Nam*	(a)	26.XI.1955
Zaire	(a)	17.VII.1967

Reservations

Antigua, Cayman Island, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent

The Governments of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla (now the independent State of Anguilla), St. Helena and St. Vincent reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs assented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent. They reserve the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent.

Argentina

(Traduction) La République Argentine adhère à la Convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage et autres événements de navigation, sous réserve expresse du droit accordé par la seconde partie de l'article 4, et il est fixé que dans le terme "infractions" auquel cet article se réfère, se trouvent inclus les abordages et tout autre événement de la navigation visés à l'article 1^o de la Convention.

Bahamas

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of the Bahamas;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of the Bahamas.

Belgium

...le Gouvernement belge, faisant usage de la faculté inscrite à l'article 4 de cette Convention, se réserve le droit de poursuivre les infractions commises dans les eaux territoriales belges.

Belize

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, consented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Belize;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Belize.

Cayman Islands

See Antigua.

China

Macao

The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to observe the provisions of Article 1 of the

Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Macao Special Administrative Region.

In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Macao Special Administrative Region.

Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention

Costa-Rica

(Traduction) Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1° and 2° de la présente Convention.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l'article 4 de cette Convention. Conformément à l'article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans se propres eaux territoriales".

Dominica, Republic of

... Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

Egypt

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l'article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji

The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji. The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France

Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de la convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage.

Germany, Federal Republic of

(Traduction) Sous réserve du prescrit de l'article 4, alinéa 2.

Grenada

Same reservations as the Republic of Dominica

Guyana

Same reservations as the Republic of Dominica

Italy

Le Gouvernement de la République d'Italie se réfère à l'article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic

Le Gouvernement de la République Khmère, d'accord avec l'article 4 de ladite convention, se réserve le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati

Same reservations as the Republic of Dominica

Mauritius

Same reservations as the Republic of Dominica

Montserrat

See Antigua.

Netherlands

Conformément à l'article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria

The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo

Same reservations as the Republic of Dominica

Portugal

Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de cette Convention.

Sarawak

Same reservations as the Republic of Dominica

St. Helena

See Antigua.

St. Kitts-Nevis

See Antigua.

St. Lucia

Same reservations as the Republic of Dominica

St. Vincent

See Antigua.

Seychelles

Same reservations as the Republic of Dominica

Solomon Isles

Same reservations as the Republic of Dominica

Spain

La Délégation espagnole désire, d'accord avec l'article 4 de la Convention sur la compétence pénale en matière d'abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga

Same reservations as the Republic of Dominica

Tuvalu

Same reservations as the Republic of Dominica

United Kingdom

1. - Her Majesty's Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty's Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.

2. - Her Majesty's Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.

(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam

Comme il est prévu à l'article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.

**Convention internationale pour
l'unification de certaines
règles sur la
Saisie conservatoire
des navires de mer**

Bruxelles, 10 mai 1952
Entrée en vigueur: 24 février 1956

**International convention for the
unification of certain rules
relating to
Arrest of sea-going ships**

Brussels, 10th May 1952
Entered into force: 24 February 1956

Algeria	(a)	18.VIII.1964
Antigua and Barbuda*	(a)	12.V.1965
Bahamas*	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize*	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
China		
Hong Kong⁽¹⁾	(a)	29.III.1963
Macao⁽²⁾	(a)	23.IX.1999
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica*	(a)	13.VII.1955
Côte d'Ivoire	(a)	23.IV.1958
Croatia*	(r)	30.VII.1992
Cuba*	(a)	21.XI.1983
Denmark	(r)	2.V.1989
Djibouti	(a)	23.IV.1958
Dominica, Republic of*	(a)	12.V.1965
Egypt*	(r)	24.VIII.1955
Fiji	(a)	29.III.1963
Finland	(r)	21.XII.1995
France	(r)	25.V.1957
France (Overseas Territories)		
Archipel des îles Marquises,		
Archipel des Tuamotu et des Gambier,		

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Arrest Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Saisie des navires 1952**Arrest of ships 1952*

Iles Australes, Iles sous le Vent, Iles Saint-Pierre et Miquelon, Iles Wallis et Futuna, Nouvelle-Calédonie et dépendances, Tahiti et dépendances, Terres australes et antarctiques françaises	(a)	23.IV.1958
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany*	(r)	6.X.1972
Greece	(r)	27.II.1967
Grenada*	(a)	12.V.1965
Guyana*	(a)	29.III.1963
Guinea	(a)	12.XII.1994
Haiti	(a)	4.XI.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland*	(a)	17.X.1989
Italy*	(r)	9.XI.1979
Khmere Republic*	(a)	12.XI.1956
Kiribati*	(a)	21.IX.1965
Latvia	(a)	17.V.1993
Luxembourg	(a)	18.II.1991
Madagascar		23.IV.1958
Mali	(a)	23.IV.1958
Morocco	(a)	11.VII.1990
Mauritania	(a)	23.IV.1958
Mauritius*	(a)	29.III.1963
Namibia	(a)	14.III.2002
Netherlands*	(r)	20.I.1983
Niger	(a)	23.IV.1958
Nigeria*	(a)	7.XI.1963
North Borneo*	(a)	29.III.1963
Norway	(r)	1.XI.1994
Paraguay	(a)	22.XI.1967
Poland	(a)	16.VII.1976
Portugal	(r)	4.V.1957
Romania	(a)	28.XI.1995
Russian Federation*	(a)	29.IV.1999
St. Kitts and Nevis*	(a)	12.V.1965
St. Lucia*	(a)	12.V.1965
St. Vincent and the Grenadines*	(a)	12.V.1965
Sarawak*	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles*	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands*	(a)	21.IX.1965
Spain	(r)	8.XII.1953
<i>(denunciation – 28.III.2011)</i>		
Sudan	(a)	23.IV.1958
Sweden	(a)	30.IV.1993
Switzerland	(a)	28.V.1954
Syrian Arabic Republic	(a)	3.II.1972

Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga*	(a)	13.VI.1978
Turks Isles and Caicos*	(a)	21.IX.1965
Tuvalu*	(a)	21.IX.1965
United Kingdom of Great Britain* and Northern Ireland	(r)	18.III.1959
United Kingdom (Overseas Territories)*		
Gibraltar	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla, Caiman Islands, Montserrat, St. Helena	(a)	12.V.1965
Guernsey	(a)	8.XII.1966
Isle of Man	(a)	14.IV.1993
Falkland Islands and dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

Reservations

Antigua

... Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Bahamas

...With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

Belize

Same reservation as the Bahamas.

Costa Rica

(Traduction) Premièrement: le 1er paragraphe de l'article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n'appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu'il lui ait appartenu.

Deuxièmement: que Costa Rica ne reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l'article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s'il s'agit des cas visés sub o), p) et q) à l'alinéa 1er de l'article 1, ou ceux de l'Etat dont le navire bat pavillon.

Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d'appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

Côte d'Ivoire

Confirmation d'adhésion de la Côte d'Ivoire. Au nom du Gouvernement de la République de Côte d'Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d'Etat, la République de Côte d'Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, qu'elle l'a été de façon continue depuis lors et que cette Convention est aujourd'hui, toujours en vigueur à l'égard de la Côte d'Ivoire.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "...en réservant conformément à l'article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d'un navire pratiquée en raison d'une créance maritime visée au point o) de l'article premier et d'appliquer à cette saisie la loi nationale".

*Saisie des navires 1952**Arrest of ships 1952*

Cuba

(Traduction) L'instrument d'adhésion contient les réserves prévues à l'article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d'Etat ou au service d'un Etat, ainsi qu'une déclaration relative à l'article 18 de la Convention.

Dominica, Republic of

Same reservation as Antigua

Egypt

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler les réserves prévues à l'article 10.

Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of

(Traduction) ...sous réserve du prescrit de l'article 10, alinéas a et b.

Grenada

Same reservation as Antigua.

Guyana

Same reservation as the Bahamas.

Ireland

Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy

Le Gouvernement de la République d'Italie se réfère à l'article 10, par. (a) et (b), et se réserve:

- (a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux o) et p) de l'article premier et d'appliquer à cette saisie sa loi nationale;
- (b) le droit de ne pas appliquer les dispositions du premier paragraphe de l'article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l'alinéa q) de l'article 1.

Khmere Republic

Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l'article 10.

Kiribati

Same reservation as the Bahamas.

Mauritius

Same reservation as Antigua.

Netherlands

Réserves formulées conformément à l'article 10, paragraphes (a) et (b):

- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique le loi néerlandaise; et
 - les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.
- Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

Nigeria

Same reservation as Antigua.

North Borneo

Same reservation as Antigua.

Russian Federation

The Russian Federation reserves the right not to apply the rules of the International Convention for the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952 to warships, military logistic ships and to other vessels owned or operated by the State and which are exclusively used for non-commercial purposes.

Pursuant to Article 10, paragraphs (a) and (b), of the International Convention for the unification of certain rules relating to the arrest of sea-going ships, the Russian Federation reserves the right not to apply:

- the rules of the said Convention to the arrest of any ship for any of the claims enumerated in Article 1, paragraph 1, subparagraphs (o) and (p), of the Convention, but to apply the legislation of the Russian Federation to such arrest;
- the first paragraph of Article 3 of the said Convention to the arrest of a ship, within the jurisdiction of the Russian Federation, for claims set out in Article 1, paragraph 1, subparagraph (q), of the Convention.

St. Kitts and Nevis

Same reservation as Antigua.

St. Lucia

Same reservation as Antigua.

St. Vincent and the Grenadines

Same reservation as Antigua.

Sarawak

Same reservation as Antigua.

Seychelles

Same reservation as the Bahamas.

Solomon Islands

Same reservation as the Bahamas.

Tonga

Same reservation as Antigua.

Turk Isles and Caicos

Same reservation as the Bahamas.

Tuvalu

Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories): Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

*Limitation de responsabilité 1957**Limitation of liability 1957*

**Convention internationale
sur la
Limitation
de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

Bruxelles, le 10 octobre 1957
Entrée en vigueur: 31 mai 1968

**International convention
relating to the
Limitation
of the liability
of owners
of sea-going ships
and protocol of signature**

Brussels, 10th October 1957
Entered into force: 31 May 1968

Algeria	(a)	18.VIII.1964
Australia (<i>denunciation – 30.V.1990</i>)	(r)	30.VII.1975
Bahamas*	(a)	21.VIII.1964
Barbados*	(a)	4.VIII.1965
Belgium (<i>denunciation – 1.IX.1989</i>)	(r)	31.VII.1975
Belize	(r)	31.VII.1975
China Macao ⁽¹⁾	(a)	20.XII.1999
Denmark* (<i>denunciation – 1.IV.1984</i>)	(r)	1.III.1965
Dominica, Republic of*	(a)	4.VIII.1965
Egypt (Arab Republic of) (<i>denunciation – 8.V.1985</i>)		
Fiji*	(a)	21.VIII.1964
Finland (<i>denunciation – 1.IV.1984</i>)	(r)	19.VIII.1964
France (<i>denunciation – 15.VII.1987</i>)	(r)	7.VII.1959
Germany (<i>denunciation – 1.IX.1986</i>)	(r)	6.X.1972
Ghana*	(a)	26.VII.1961
Grenada*	(a)	4.VIII.1965
Guyana*	(a)	25.III.1966
Iceland*	(a)	16.X.1968
India*	(r)	1.VI.1971
Iran*	(r)	26.IV.1966
Israel*	(r)	30.XI.1967

⁽¹⁾ The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Limitation de responsabilité 1957**Limitation of liability 1957*

Japan	(r)	1.III.1976
<i>(denunciation – 19.V.1983)</i>		
Kiribati*	(a)	21.VIII.1964
Lebanon	(a)	23.XII.1994
Madagascar	(a)	13.VII.1965
Mauritius*	(a)	21.VIII.1964
Monaco*	(a)	24.I.1977
Netherlands	(r)	10.XII.1965
<i>(denunciation – 1.IX.1989)</i>		
Aruba*	(r)	1.I.1986
Norway	(r)	1.III.1965
<i>(denunciation – 1.IV.1984)</i>		
Papua New Guinea*	(a)	14.III.1980
Poland	(r)	1.XII.1972
Portugal*	(r)	8.IV.1968
St. Lucia*	(a)	4.VIII.1965
St. Vincent and the Grenadines	(a)	4.VIII.1965
Seychelles*	(a)	21.VIII.1964
Singapore*	(a)	17.IV.1963
Solomon Islands*	(a)	21.VIII.1964
Spain*	(r)	16.VII.1959
<i>(denunciation - 04.I. 2006)</i>		
Sweden	(r)	4.VI.1964
<i>(denunciation – 1.IV.1984)</i>		
Switzerland	(r)	21.I.1966
Syrian Arab Republic	(a)	10.VII.1972
Tonga*	(a)	13.VI.1978
Tuvalu*	(a)	21.VIII.1964
United Arab Republic*	(a)	7.IX.1965
United Kingdom*	(r)	18.II.1959
Isle of Man	(a)	18.XI.1960
Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar, British Virgin Islands	(a)	21.VIII.1964
Guernsey and Jersey	(a)	21.X.1964
Caiman Islands, Montserrat, Caicos and Turks Isles*	(a)	4.VIII.1965
Vanuatu	(a)	8.XII.1966
Zaire	(a)	17.VII.1967

Reservations**Bahamas**

...Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados

Same reservation as Bahamas

China

The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the

Convention. The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to implement the Convention either by giving it the force of law in the Macao Special Administrative Region, or by including the provisions of the Convention, in appropriate form, in legislation of the Macao Special Administrative Region. Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention.

Denmark

Le Gouvernement du Danemark se réserve le droit:

- 1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Dominica, Republic of

Same reservation as Bahamas

Egypt Arab Republic

Reserves the right:

- 1) to exclude the application of Article 1, paragraph (1)(c);
- 2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
- 3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

Fiji

Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu'en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l'indépendance de Fidji, c'est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

Ghana

The Government of Ghana in acceding to the Convention reserves the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Grenada

Same reservation as Bahamas

Guyana

Same reservation as Bahamas

Iceland

The Government of Iceland reserves the right:

- 1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India

Reserve the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran

Le Gouvernement de l'Iran se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Israel

The Government of Israel reserves to themselves the right to:

- 1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);
- 2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;

The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Kiribati

Same reservation as Bahamas

Mauritius

Same reservation as Bahamas

Monaco

En déposant son instrument d'adhésion, Monaco fait les réserves prévues au paragraphe 2° du Protocole de signature.

Netherlands-Aruba

La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.

La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n'est pas valable pour Aruba.

Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:

Le Gouvernement des Pays-Bas se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

... Conformément au paragraphe (2)(c) du Protocole de signature Nous nous réservons de donner effet à la présente Convention en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea

- (a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.
- (b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
- (c) The Government of Papua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

Portugal

(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia

Same reservation as Bahamas

Seychelles

Same reservation as Bahamas

Singapore

Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu'il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:

...Subject to the following reservations:

- a) the right to exclude the application of Article 1, paragraph (1)(c); and
- b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands

Same reservation as Bahamas

Spain

Le Gouvernement espagnol se réserve le droit:

- 1) d'exclure du champ d'application de la Convention les obligations et les responsabilités prévues par l'article 1, paragraphe (1)(c);
- 2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Tonga

Reservations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

Tuvalu*Same reservation as Bahamas***United Kingdom of Great Britain and Northern Ireland**

Subject to the following observations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
- 3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore, in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of the United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

United Kingdom Overseas Territories**Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands, Caiman Islands, Caicos and Turks Isles, Falkland and Dependencies, Gibraltar, Guernsey and Jersey, Hong Kong, Isle of Man, Montserrat**

... Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Protocole portant modification de la convention internationale sur la Limitation de la responsabilité des propriétaires de navires de mer du 10 octobre 1957

Bruxelles le 21 décembre 1979
Entré en vigueur: 6 octobre 1984

Australia
Belgium

Protocol to amend the international convention relating to the Limitation of the liability of owners of sea-going ships of 10 October 1957

Brussels, 21st December 1979
Entered into force: 6 October 1984

(r) 30.XI.1983
(r) 7.IX.1983

*Stowaways 1957**Carriage of passengers 1961*

Luxembourg	(a)	18.II.1991
Poland	(r)	6.VII.1984
Portugal	(r)	30.IV.1982
Spain	(r)	14.V.1982
<i>(denunciation - 04.I. 2006)</i>		
Switzerland	(r)	20.I.1988
United Kingdom of Great Britain and Northern Ireland	(r)	2.III.1982
<i>(denunciation - 1.XII.1985)</i>		
<i>Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles (denunciation - 1.XII.1985)</i>		

**Convention internationale sur les
Passagers Clandestins**

Bruxelles, 10 octobre 1957
Pas encore en vigueur

Belgium	(r)	31.VII.1975
Denmark	(r)	16.XII.1963
Finland	(r)	2.II.1966
Italy	(r)	24.V.1963
Luxembourg	(a)	18.II.1991
Madagascar	(a)	13.VII.1965
Morocco	(a)	22.I.1959
Norway	(r)	24.V.1962
Peru	(r)	23.XI.1961
Syrian Arab Republic	(a)	15.IV.2003
Sweden	(r)	27.VI.1962

**International convention relating to
Stowaways**

Brussels, 10th October 1957
Not yet in force

	(r)	31.VII.1975
	(r)	16.XII.1963
	(r)	2.II.1966
	(r)	24.V.1963
	(a)	18.II.1991
	(a)	13.VII.1965
	(a)	22.I.1959
	(r)	24.V.1962
	(r)	23.XI.1961
	(a)	15.IV.2003
	(r)	27.VI.1962

**Convention internationale
pour l'unification de certaines
règles en matière de
Transport de passagers
par mer
et protocole**

Bruxelles, 29 avril 1961
Entrée en vigueur: 4 juin 1965

Algeria	(a)	2.VII.1973
Cuba*	(a)	7.I.1963
France	(r)	4.III.1965
<i>(denunciation - 3.XII.1975)</i>		
Haïti	(a)	19.IV.1989
Iran	(a)	26.IV.1966

**International convention
for the unification of
certain rules relating to
Carriage of passengers
by sea
and protocol**

Brussels, 29th April 1961
Entered into force: 4 June 1965

	(a)	2.VII.1973
	(a)	7.I.1963
	(r)	4.III.1965
	(a)	19.IV.1989
	(a)	26.IV.1966

*Carriage of passengers 1961**Nuclear ships 1962*

Madagascar	(a)	13.VII.1965
Morocco*	(r)	15.VII.1965
Peru	(a)	29.X.1964
Switzerland	(r)	21.I.1966
Tunisia	(a)	18.VII.1974
United Arab Republic*	(r)	15.V.1964
Zaire	(a)	17.VII.1967

Reservations**Cuba***(Traduction) ...Avec les réserves suivantes:*

- 1) De ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux.
- 2) De ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
- 3) De donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

Morocco

...Sont et demeurent exclus du champ d'application de cette convention:

- 1) les transports de passagers effectués sur les navires armés au cabotage ou au bornage, au sens donné à ces expressions par l'article 52 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par le dahir du 29 Chaabane 1380 (15 février 1961).
- 2) les transports internationaux de passagers lorsque le passager et le transporteur sont tous deux de nationalité marocaine.

Les transports de passagers visés...ci-dessus demeurent régis en ce qui concerne la limitation de responsabilité, par les disposition de l'article 126 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par la dahir du 16 Joumada II 1367 (26 avril 1948).

United Arab Republic

Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

**Convention internationale
relative à la responsabilité
des exploitants de
Navires nucléaires
et protocole additionnel**

Bruxelles, 25 mai 1962
Pas encore en vigueur

**International convention
relating to the liability
of operators of
Nuclear ships
and additional protocol**

Brussels, 25th May 1962
Not yet in force

Lebanon	(r)	3.VI.1975
Madagascar	(a)	13.VII.1965
Netherlands*	(r)	20.III.1974
Portugal	(r)	31.VII.1968
Suriname	(r)	20.III.1974
Syrian Arab Republic	(a)	1.VIII.1974
Zaire	(a)	17.VII.1967

*Carriage of passengers' luggage 1967**Vessels under construction 1967***Reservations****Netherlands**

Par note verbale datée du 29 mars 1976, reçue le 5 avril 1976, par le Gouvernement belge, l'Ambassade des Pays-Bas à Bruxelles a fait savoir:

Le Gouvernement du Royaume des Pays-Bas tient à déclarer, en ce qui concerne les dispositions du Protocole additionnel faisant partie de la Convention, qu'au moment de son entrée en vigueur pour le Royaume des Pays-Bas, ladite Convention y devient impérative, en ce sens que les prescriptions légales en vigueur dans le Royaume n'y seront pas appliquées si cette application est inconciliable avec les dispositions de la Convention.

**Convention internationale
pour l'unification de certaines
règles en matière de
Transport de bagages
de passagers par mer**

Bruxelles, 27 mai 1967
Pas en vigueur

**International Convention
for the unification of
certain rules relating to
Carriage of passengers'
luggage by sea**

Brussels, 27th May 1967
Not in force

Algeria

(a)

2.VII.1973

Cuba*

(a)

15.II.1972

Reservations**Cuba**

(Traduction) Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:

1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.

3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l'intérieur de ses frontières territoriales pour un voyage dont le port d'embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l'article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l'article 17 de ladite Convention.

**Convention internationale relative à
l'inscription des droits relatifs aux**

Navires en construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

**International Convention relating
to the registration of rights
in respect of**

Vessels under construction

Brussels, 27th May 1967
Not yet in force

Croatia	(r)	3.V.1971
Greece	(r)	12.VII.1974
Norway	(r)	13.V.1975
Sweden	(r)	13.XI.1975
Syrian Arab Republic	(a)	1.VIII.1974

**Convention internationale
pour l'unification de
certaines règles relatives aux
Privilèges et hypothèques
maritimes**

Bruxelles, 27 mai 1967
Pas encore en vigueur

Denmark*
Morocco*
Norway*
Sweden*
Syrian Arab Republic
Vanuatu

**International Convention
for the unification of
certain rules relating to
Maritime liens and
mortgages**

Brussels, 27th May 1967
Not yet in force

(r) 23.VIII.1977
(a) 12.II.1987
(r) 13.V.1975
(r) 13.XI.1975
(a) 1.VIII.1974
26.X.1999

Reservations

Denmark

L'instrument de ratification du Danemark est accompagné d'une déclaration dans laquelle il est précisé qu'en ce qui concerne les Iles Féroé les mesures d'application n'ont pas encore été fixées.

Morocco

L'instrument d'adhésion est accompagné de la réserve suivante: Le Royaume du Maroc adhère à la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes faite à Bruxelles le 27 mai 1967, sous réserve de la non-application de l'article 15 de la dite Convention.

Norway

Conformément à l'article 14 le Gouvernement du Royaume de Norvège fait les réserves suivantes:

- 1) mettre la présente Convention en vigueur en incluant les dispositions de la présente Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

Sweden

Conformément à l'article 14 la Suède fait les réserves suivantes:

- 1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

Editor's notes

1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 30 June, 2006.
2. The dates mentioned are the dates of the deposit of instruments.
3. The asterisk after the name of a State Party indicates that that State has made declarations, reservations or statements the text of which is published after the relevant status of ratifications and accessions.
4. The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Notes de l'éditeur

1. Cet état est basé sur des informations recues de l'Organisation Maritime Internationale et reflète la situation au 30 June, 2006.
2. Les dates mentionnées sont les dates du dépôt des instruments.
3. L'asterisque qui suit le nom d'un Etat indique que cet Etat a fait une déclaration, une reserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhesions.
4. Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

**International Convention on
Civil liability
for oil pollution damage**

(CLC 1969)

Done at Brussels, 29 November 1969
Entered into force: 19 June 1975

**Convention Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les hydrocarbures
(CLC 1969)**

Signée à Bruxelles, le 29 novembre 1969
Entrée en vigueur: 19 juin 1975

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	30.VI.2006
Algeria (accession)	14.VI.1974	19.VI.1975	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (ratification)¹	7.XI.1983	5.II.1984	15.V.1998
Azerbaijan (accession)	16.VII.2004	14.X.2004	
Bahamas (accession)	22.VII.1976	20.X.1976	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)¹	12.I.1977	12.IV.1977	6.X.1999
Belize (accession)	2.IV.1991	1.VII.1991	27.XI.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brazil (ratification)	17.XII.1976	17.III.1977	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cambodia (accession)	28.XI.1994	26.II.1995	
Cameroon (ratification)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession)	24.I.1989	24.IV.1989	29.V.1999
Chile (accession)	2.VIII.1977	31.X.1977	
China² (accession)¹	30.I.1980	29.IV.1980	5.I.2000
Colombia (accession)	26.III.1990	24.VI.1990	25.I.2006
Costa Rica (accession)	8.XII.1997	8.III.1998	
Côte d'Ivoire (ratification)	21.VI.1973	19.VI.1975	
Croatia (succession)	–	8.X.1991	30.VII.1999
Cyprus (accession)	19.VI.1989	17.IX.1989	15.V.1998
Denmark (accession)	2.IV.1975	19.VI.1975	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Dominican Republic (ratification)	2.IV.1975	19.VI.1975	
Ecuador (accession)	23.XII.1976	23.III.1977	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996	
Estonia (accession)	1.XII.1992	1.III.1993	6.VIII.2006
Fiji (accession)	15.VIII.1972	19.VI.1975	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998
France (ratification)	17.III.1975	19.VI.1975	15.V.1998
Gabon (accession)	21.I.1982	21.IV.1982	31.V.2003
Gambia (accession)	1.XI.1991	30.I.1992	

CLC 1969

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Georgia (accession)	19.IV.1994	18.VII.1994	
Germany³ (ratification)¹	20.V.1975	18.VIII.1975 ⁴	15.V.1998
Ghana (ratification)	20.IV.1978	19.VII.1978	
Greece (accession)	29.VI.1976	27.IX.1976	15.V.1998
Guatemala (acceptance)¹	20.X.1982	18.I.1983	
Guyana (accession)	10.XII.1997	10.III.1998	
Honduras (accession)	2.XII.1998	2.III.1999	
Iceland (ratification)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	1.V.1987	30.VII.1987	21.VI.2001
Indonesia (ratification)	1.IX.1978	30.XI.1978	
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (ratification)¹	27.II.1979	28.V.1979	8.X.2000
Japan (accession)	3.VI.1976	1.IX.1976	15.V.1998
Jordan (accession)	14.X.2003	12.I.2004	
Kazakhstan (accession)	7.III.1994	5.VI.1994	
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Latvia (accession)	10.VII.1992	8.X.1992	
Lebanon (accession)	9.IV.1974	19.VI.1975	
Liberia (accession)	25.IX.1972	19.VI.1975	15.V.1998
Libyan Arab Jamahiriya (accession)	28.IV.2005	26.VII.2005	
Luxembourg (accession)	14.II.1991	15.V.1991	21.XI.2006
Malaysia (accession)	6.I.1995	6.IV.1995	9.VI.2005
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (ratification)	21.VIII.1975	19.XI.1975	15.V.1998
Mongolia (accession)	3.III.2003	1.VI.2003	
Montenegro (succession)^{6, 7}	-	6.VI.2006	23.II.2008
Morocco (accession)	11.IV.1974	19.VI.1975	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (ratification)	9.IX.1975	8.XII.1975	15.V.1998
New Zealand (accession)	27.IV.1976	26.VII.1976	25.VI.1999
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Nigeria (accession)	7.V.1981	5.VIII.1981	24.V.2003
Norway (accession)	21.III.1975	19.VI.1975	15.V.1998
Oman (accession)	24.I.1985	24.IV.1985	15.V.1998
Panama (ratification)	7.I.1976	6.IV.1976	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Peru (accession)¹	24.II.1987	25.V.1987	
Poland (ratification)	18.III.1976	16.VI.1976	21.XII.2000
Portugal (ratification)	26.XI.1976	24.II.1977	1.XII.2005
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	18.XII.1978	18.III.1979	15.V.1998

CLC 1969

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Russian Federation ⁵ (accession) ¹	24.VI.1975	22.IX.1975	20.III.2001
Saint Kitts and Nevis (accession) ¹	14.IX.1994	13.XII.1994	
Saint Vincent and the Grenadines (accession)	19.IV.1989	18.VII.1989	9.X.2002
Sao Tome and Principe (accession)	29.X.1998	27.I.1999	
Saudi Arabia (accession) ¹	15.IV.1993	14.VII.1993	
Senegal (accession)	27.III.1972	19.VI.1975	
Serbia (succession) ^{6,7}	–	3.VI.2006	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Singapore (accession)	16.IX.1981	15.XII.1981	31.XII.1998
Slovenia (succession)	–	25.VI.1991	19.VII.2001
South Africa (accession)	17.III.1976	15.VI.1976	1.X.2005
Spain (ratification)	8.XII.1975	7.III.1976	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	19.VI.1975	15.V.1998
Switzerland (ratification)	15.XII.1987	14.III.1988	15.V.1998
Syrian Arab Republic (accession) ¹	6.II.1975	19.VI.1975	
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	2.VIII.1976	15.V.1998
Turkmenistan (accession)	21.IX.2009	20.XII.2009	
Tuvalu (succession)	–	1.X.1978	30.VI.2005
United Arab Emirates (accession)	15.XII.1983	14.III.1984	
United Kingdom (ratification)	17.III.1975	19.VI.1975	15.V.1998
Vanuatu (accession)	2.II.1983	3.V.1983	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yemen (accession)	6.III.1979	4.VI.1979	31.VII.2009

Number of Contracting States: 38

The Convention applies provisionally in respect of the following States:

Kiribati

Solomon Islands

¹ With a declaration, reservation or statement.

² Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Effective date of denunciation: 5.I.2000.

³ On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 13.III.1978.

⁴ In accordance with the intention expressed by the Government of the Federal Republic of Germany and based on its interpretation of article XV of the Convention.

⁵ As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

⁶ As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Convention is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.

⁷ Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 2006.

Declarations, Reservations and Statements

Australia

The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:

“Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that it is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia’s understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship’s operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia.”

“Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic’s position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia.”

Belgium

The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:

[Translation]

“...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.

The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.

Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.

The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics,

of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972. The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the 'owner of the ship' in the terms of this Convention.

The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium."

China

At the time of depositing its instrument of accession the Representative of the People's Republic of China declared "that the signature to the Convention by Taiwan authorities is illegal and null and void".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):

[Translation]

"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it."

"The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States."⁽¹⁾

The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.

The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations."

⁽¹⁾ The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that “with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

Guatemala

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

[Translation]

“It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize.”

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

[Translation]

“The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2).”

Peru⁽²⁾

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

[Translation]

“With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the

⁽²⁾ The depositary received the following communication dated 14 July 1987 from the Embassy of the Federal Republic of Germany in London (in the English language):

“...the Government of the Federal Republic of Germany has the honour to reiterate its well-known position as to the sea area up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast, claimed by Peru to be under the sovereignty and

sovereignty and jurisdiction of the Peruvian State, up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast”.

Russian Federation

See USSR.

Saint Kitts and Nevis

The instrument of accession of Saint Kitts and Nevis contained the following declaration:

“The Government of Saint Kitts and Nevis considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes”.

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

[Translation]

“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

“...this accession [to the Convention] in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention”.

USSR

The instrument of accession of the Union of Soviet Republics contains the following reservation (in the Russian language):

[Translation]

“The Union of Soviet Socialist Republic does not consider itself bound by the provisions of article XI, paragraph 2 of the Convention, as they contradict the principle

jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles.”

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

“...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles.”

CLC 1969

of the judicial immunity of a foreign State.”⁽³⁾

Furthermore, the instrument of accession contains the following statement (in the Russian language):

[Translation]

“On its accession to the International Convention on Civil Liability for Oil Pollution Damage, 1969, the Union of Soviet Socialist Republics considers it necessary to state that:

“(a) the provisions of article XIII, paragraph 2 of the Convention which deny participation in the Convention to a number of States, are of a discriminatory nature and contradict the generally recognized principle of the sovereign equality of States, and

(b) the provisions of article XVII of the Convention envisaging the possibility of its extension by the Contracting States to the territories for the international relations of which they are responsible are outdated and contradict the United Nations Declaration on Granting Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960)”.

The depositary received on 17 July 1979 from the Embassy of the Union of Soviet Socialist Republics in London a communication stating that:

“...the Soviet side confirms the reservation to paragraph 2 of article XI of the International Convention of 1969 on the Civil Liability for Oil Pollution Damage, made by the Union of Soviet Socialist Republics at adhering to the Convention. This reservation reflects the unchanged and well-known position of the USSR regarding the impermissibility of submitting a State without its express consent to the courts jurisdiction of another State. This principle of the judicial immunity of a foreign State is consistently upheld by the USSR at concluding and applying multilateral international agreements on various matters, including those of merchant shipping and the Law of the sea.

In accordance with article III and other provisions of the 1969 Convention, the liability for the oil pollution damage, established by the Convention is attached to “the owner” of “the ship”, which caused such damage, while paragraph 3 of article I of the Convention stipulates that “in the case of a ship owned by a state and operated by a company which in that state is registered as the ship’s operator, “owner” shall mean such company”. Since in the USSR state ships used for commercial purposes are under the operational management of state organizations who have an independent liability on their obligations, it is only against these organizations and not against the Soviet state that actions for compensation of the oil pollution damage in accordance with the 1969 Convention could be brought. Thus the said reservation does not prevent the consideration in foreign courts in accordance with the jurisdiction established by the Convention, of such suits for the compensation of the damage by the merchant ships owned by the Soviet state”.

⁽³⁾ The following Governments do not accept the reservation contained in the instrument of accession of the Government of the Union of Soviet Socialist Republics, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom.

**Protocol to the International
Convention on
Civil liability
for oil pollution damage**

(CLC PROT 1976)

Done at London,
19 November 1976
Entered into force: 8 April 1981

**Protocole à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures**

(CLC PROT 1976)

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 8 avril 1981

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	
Australia (accession)	7.XI.1983	5.II.1984	
Azerbaijan (accession)	16.VII.2004	14.X.2004	
Bahamas (acceptance)	3.III.1980	8.IV.1981	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	4.VIII.1994	
Belgium (accession)	15.VI.1989	13.IX.1989	
Belize (accession)	2.IV.1991	1.VII.1991	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	
Cambodia (accession)	8.VI.2001	6.IX.2001	
Cameroon (accession)	14.V.1984	12.VIII.1984	
Canada (accession)	24.I.1989	24.IV.1989	
China (accession)^{1, 2}	29.IX.1986	28.XII.1986	22.VIII.2003
Colombia (accession)	26.III.1990	24.VI.1990	25.I.2006
Costa Rica (accession)	8.XII.1997	8.III.1998	
Cyprus (accession)	19.VI.1989	17.IX.1989	
Denmark (accession)	3.VI.1981	1.IX.1981	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Finland (accession)	8.I.1981	8.IV.1981	
France (approval)	7.XI.1980	8.IV.1981	
Georgia (accession)	25.VIII.1995	23.XI.1995	
Germany (ratification)²	28.VIII.1980	8.IV.1981	
Greece (accession)	10.V.1989	8.VIII.1989	
Iceland (accession)	24.III.1994	22.VI.1994	
India (accession)	1.V.1987	30.VII.1987	
Ireland (accession)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	3.VI.1983	1.IX.1983	
Japan (accession)	24.VIII.1994	22.XI.1994	

CLC Protocol 1976

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Kuwait (accession)	1.VII.1981	29.IX.1981	
Liberia (accession)	17.II.1981	8.IV.1981	
Luxembourg (accession)	14.II.1991	15.V.1991	
Maldives (accession)	14.VI.1981	12.IX.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	11.VIII.1994	
Netherlands (accession)	3.VIII.1982	1.XI.1982	
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Norway (accession)	17.VII.1978	8.IV.1981	
Oman (accession)	24.I.1985	24.IV.1985	
Peru (accession)	24.II.1987	25.V.1987	
Poland (accession)¹	30.X.1985	28.I.1986	
Portugal (accession)	2.I.1986	2.IV.1986	
Qatar (accession)	2.VI.1988	31.VIII.1988	28.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	
Russian Federation (accession)^{1,4}	2.XII.1988	2.III.1989	
Saudi Arabia (accession)³	15.IV.1993	14.VII.1993	
Singapore (accession)	15.XII.1981	15.III.1982	
Spain (accession)	22.X.1981	20.I.1982	
Sweden (ratification)	7.VII.1978	8.IV.1981	
Switzerland (accession)¹	15.XII.1987	14.III.1988	
United Arab Emirates (accession)	14.III.1984	12.VI.1984	
United Kingdom (ratification)¹	31.I.1980	8.IV.1981	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	
Venezuela (accession)	21.I.1992	20.IV.1992	
Yemen (accession)	4.VI.1979	8.IV.1981	

Number of Contracting States: 53

¹ With a notification under article V(9)(c) of the Convention, as amended by the Protocol.

² Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Ceased to apply to the Hong Kong Special Administrative Region with effect from 22.VIII.2003.

³ With a declaration.

⁴ As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

States which have denounced the Protocol

	Date of receipt of denunciation	Effective date of denunciation
Australia	22.VI.1988	[date of entry into force of 1984 CLC Protocol]
China (in respect of HKAR)	22.VIII/2002	22.VIII.2003
Colombia	25.I.2005	25.I.2006
Ireland	15.V.1997	15.V.2008
Malta	6.I.2000	6.I.2001
Qatar	28.XI.2001	28.XI.2002
United Kingdom	12.V.1997	12.V.1998

Declarations, Reservations and Statements**Federal Republic of Germany**

The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):

“...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

[Translation]

“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

Notifications**Article V(9)(c) of the Convention, as amended by the Protocol****China**

“...the value of the national currency, in terms of SDR, of the People’s Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund.”

Poland

“Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.

CLC Protocol 1976

However, those SDR's will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund.

The method of conversion is that the Polish National Bank will fix a rate of exchange of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies.

The above method of calculation is in accordance with the provisions of article II paragraph 9 item "a" (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage."

Switzerland*[Translation]*

"The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

USSR

"In accordance with article V, paragraph 9 "c" of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of "The Special Drawing Right" expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of "The Special Drawing Right", determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR".

United Kingdom

"...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.

**Protocol of 1992 to amend the
International Convention on
Civil liability for oil
pollution damage, 1969**

(CLC PROT 1992)

Done at London,
27 November 1992
Entry into force: 30 May 1996

**Protocole à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures, 1969**

(CLC PROT 1992)

Signé à Londres,
le 27 novembre 1992
Entrée en vigueur: 30 May 1996

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30.VI.2005	30.VI.2006
Algeria (accession)	11.VI.1998	11.VI.1999
Angola (accession)	4.X.2001	4.X.2002
Antigua and Barbuda (accession)	14.VI.2000	14.VI.2001
Argentina (accession)²	13.X.2000	13.X.2001
Australia (accession)	9.X.1995	9.X.1996
Azerbaijan (accession)	16.VII.2004	16.VII.2005
Bahamas (accession)	1.IV.1997	1.IV.1998
Bahrain (accession)	3.V.1996	3.V.1997
Barbados (accession)	7.VII.1998	7.VII.1999
Belgium (accession)	6.X.1998	6.X.1999
Belize (accession)	27.XI.1998	27.XI.1999
Benin (accession)	5.II.2010	5.II.2011
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Bulgaria (accession)	28.XI.2003	28.XI.2004
Cambodia (accession)	8.VI.2001	8.VI.2002
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession)	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
Chile (accession)	29.V.2002	29.V.2003
China (accession)^{1, 4}	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Cook Islands (accession)	12.III.2007	12.III.2008
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996
Djibouti (accession)	8.I.2001	8.I.2002
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Ecuador (accession)	11.XII.2007	11.XII.2008
Egypt (accession)	21.IV.1995	30.V.1996

CLC Protocol 1992

	Date of deposit of instrument	Date of entry into force
El Salvador (accession)	2.I.2002	2.I.2003
Estonia (accession)	6.VII.2004	6.VII.2005
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification)¹	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Hungary (accession)	30.III.2007	30.III.2008
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	15.XI.1999	15.XI.2000
Indonesia (accession)	6.VII.1999	6.VII.2000
Iran, Islamic Republic of (accession)	24.X.2007	24.X.2008
Ireland (accession)²	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	6.VI.1997	6.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Kiribati (accession)	5.II.2007	5.II.2008
Kuwait (accession)	16.IV.2004	16.IV.2005
Latvia (accession)	9.III.1998	9.III.1999
Lebanon (accession)	30.III.2005	30.III.2006
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Luxembourg (accession)	21.XI.2005	21.XI.2006
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Maldives (accession)	20.V.2005	20.V.2006
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Moldova (accession)	11.X.2005	11.X.2006
Monaco (ratification)	8.XI.1996	8.XI.1997
Mongolia (accession)	8.VIII.2008	8.VIII.2009
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)^{5, 6}	15.XI.1996	15.XI.1997
New Zealand (accession)²	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996

CLC Protocol 1992

Pakistan (accession)	2.III.2005	2.III.2006
Panama (accession)	18.III.1999	18.III.2000
Papua New Guinea (accession)	23.I.2001	23.I.2002
Peru (accession)	1.IX.2005	1.IX.2006
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000
Portugal (accession)	13.XI.2001	13.XI.2002
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession)²	7.III.1997	16.V.1998
Romania (accession)	27.XI.2000	27.XI.2001
Russian Federation (accession)	20.III.2000	20.III.2001
Saudi Arabia (accession)	203.V.2005	23.V.2006
Samoa (accession)	1.II.2002	1.II.2003
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
St. Lucia (accession)	20.V.2004	20.V.2005
St. Vincent and the Grenadines (accession)	9.X.2001	9.X.2002
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	18.IX.1997	18.IX.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
Solomon Island (accession)	30.VI.2004	30.VI.2005
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)	6.VII.1995	6.VII.1996
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Switzerland (accession)	4.VII.1996	4.VII.1997
Syria (accession)²	22.II.2005	22.II.2006
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)²	17.VIII.2001	17.VIII.2002
Turkmenistan (accession)	21.IX.2009	21.IX.2010
Tuvalu (accession)	30.VI.2004	30.VI.2005
Ukraine (accession)	29.XI.2007	29.XI.2008
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)³	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999
Viet Nam (accession)	17.VI.2003	17.VI.2004
Yemen (accession)	20.IX.2006	20.IX.2007

Number of Contracting States: 123

¹ China declared that the Protocol will also be applicable to the Hong Kong Special Administrative Region.

CLC Protocol 1992

- 2 With a declaration.
- 3 The United Kingdom declared its accession to be effective in respect of:
 The Bailiwick of Jersey
 The Isle of Man
 Falkland Islands*
 Montserrat
 South Georgia and the South Sandwich Islands
 Anguilla)
 Bailiwick of Guernsey)
 Bermuda)
 British Antarctic Territory)
 British Indian Ocean Territory) with effect from 20.2.98
 Pitcairn, Henderson,
 Ducie and Oeno Islands)
 Sovereign Base Areas of
 Akrotiri and Dhekelia on Cyprus)
 Turks & Caicos Islands)
 Virgin Islands)
 Cayman Islands)
 Gibraltar) with effect from 15.5.98
 St Helena and its Dependencies)
- 4 Applies to the Macau Special Administrative Region with effect from 24 June 2005.
- 5 Applies to the Netherlands Antilles with effect from 21 December 2005.
- 6 Applies to Aruba with effect from 12 April 2006.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Germany

The instrument of ratification of Germany was accompanied by the following declaration:

“The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992.”

New Zealand

The instrument of accession of New Zealand contained the following declaration:

“And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary”.

**International Convention
relating to
Intervention on the
high seas in cases of
oil pollution
casualties, 1969**

(Intervention 1969)

Done at Brussels,
29 November 1969
Entry into force: 6 May 1975

**Convention Internationale
sur
L'intervention en haute
mer en cas d'accident
entraînant ou pouvant
entraîner une pollution par
les hydrocarbures, 1969**

(Intervention 1969)

Signé à Bruxelles
le 29 Novembre 1969
Entrée en vigueur: 6 Mai 1975

	Date of signature or deposit of of instrument	Date of entry into force or succession
Angola (accession)	4.X.2001	2.I.2002
Argentina (accession) ¹	21.IV.1987	20.VII.1987
Australia (ratification) ¹	7.XI.1983	5.II.1984
Bahamas (accession)	22.VII.1976	20.X.1976
Bangladesh (accession)	6.XI.1981	4.II.1982
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (ratification)	21.X.1971	6.V.1975
Benin (accession)	1.XI.1985	30.I.1986
Brazil (ratification)	18.I.2008	17.IV.2008
Bulgaria (accession) ¹	2.XI.1983	31.I.1984
Cameroon (ratification) ¹	14.V.1984	12.VIII.1984
Chile (accession)	28.II.1995	29.V.1995
China (accession) ^{4, 5}	23.II.1990	24.V.1990
Côte d'Ivoire (ratification)	8.I.1988	7.IV.1988
Croatia (succession)	—	8.X.1991
Cuba (accession) ¹	5.V.1976	3.VIII.1976
Denmark (signature)	18.XII.1970	6.V.1975
Djibouti (accession)	1.III.1990	30.V.1990
Dominican Republic (ratification)	5.II.1975	6.V.1975
Ecuador (accession)	23.XII.1976	23.III.1977
Egypt (accession)	3.II.1989	4.V.1989
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996
Estonia (accession)	16.V.2008	14.VIII.2008
Fiji (accession)	15.VIII.1972	6.V.1975
Finland (ratification)	6.IX.1976	5.XII.1976
France (ratification)	10.IV.1972	6.IV.1975
Gabon (accession)	21.I.1982	21.IV.1982
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification) ^{1, 2}	7.V.1975	5.VIII.1975
Ghana (ratification)	20.IV.1978	19.VII.1978
Guyana (accession)	10.XII.1997	10.III.1998
Iceland (ratification)	17.VII.1980	15.X.1980
India (accession)	16.VI.2000	14.IX.2000

Intervention 1969

	Date of signature or deposit of of instrument	Date of entry into force or succession
Ireland (ratification)	21.VIII.1980	19.XI.1980
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Italy (ratification)	27.II.1979	28.V.1979
Jamaica (accession)	13.III.1991	11.VI.1991
Japan (acceptance)	6.IV.1971	6.V.1975
Kuwait (accession)	2.IV.1981	1.VII.1981
Latvia (accession)	9.VIII.2001	7.IX.2001
Lebanon (accession)	5.VI.1975	3.IX.1975
Liberia (accession)	25.IX.1972	6.V.1975
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	17.XII.2002	17.III.2003
Mexico (accession)	8.IV.1976	7.VII.1976
Monaco (ratification)	24.II.1975	6.V.1975
Montenegro (succession)	–	3.VI.2006
Morocco (accession)	11.IV.1974	6.V.1975
Namibia (accession)	12.III.2004	10.VI.2004
Netherlands (ratification)	19.IX.1975	18.XII.1975
New Zealand (accession)	26.III.1975	6.V.1975
Nicaragua (accession)	15.XI.1994	13.II.1995
Nigeria (accession)	24.II.2004	24.V.2004
Norway (accession)	12.VII.1972	6.V.1975
Oman (accession)	24.I.1985	24.IV.1985
Pakistan (accession)	13.I.1995	13.IV.1995
Panama (ratification)	7.I.1976	6.IV.1976
Papua New Guinea (accession)	12.III.1980	10.VI.1980
Poland (ratification)	1.VI.1976	30.VIII.1976
Portugal (ratification)	15.II.1980	15.V.1980
Qatar (accession)	2.VI.1988	31.VIII.1988
Russian Federation (accession)^{1,3}	30.XII.1974	6.V.1975
St. Kitts and Nevis (accession)	7.X.2004	5.I.2005
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent & the Grenadines (accession)	12.V.1999	10.VIII.1999
Senegal (accession)	27.III.1972	6.V.1975
Serbia (succession)	–	27.IV.1992
Slovenia (succession)	–	25.VI.1991
South Africa (accession)	1.VII.1986	29.IX.1986
Spain (ratification)	8.XI.1973	6.V.1975
Sri Lanka (accession)	12.IV.1983	11.VII.1983
Suriname (succession)	–	25.XI.1975
Sweden (acceptance)	8.II.1973	6.IV.1975
Switzerland (ratification)	15.XII.1987	14.III.1988
Syrian Arab Republic (accession)¹	6.II.1975	6.V.1975
Tanzania (accession)	16.V.2006	14.VIII.2006
Tonga (accession)	1.II.1996	1.V.1996
United Republic of Tanzania (accession)	16.V.2006	14.VIII.2006
Trinidad and Tobago (accession)	6.III.2000	4.VI.2000

Intervention 1969

	Date of signature or deposit of of instrument	Date of entry into force or succession
Tunisia (accession)	4.V.1976	2.VIII.1976
Ukraine (succession)	–	17.XII.1993
United Arab Emirates (accession)	15.XII.1983	14.III.1984
United Kingdom (ratification)	12.I.1971	6.V.1975
United States (ratification)	21.II.1974	6.V.1975
Vanuatu (accession)	14.IX.1992	13.XII.1992
Yemen (accession)	6.III.1979	4.VI.1979

Number of Contracting States: 86

¹ With a declaration, reservation or statement

² On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded¹ to the Convention on 21 December 1978.

³ As from 26 December 1991, the membership of the USSR in the Convention is continued by the Russian Federation.

⁴ Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.

⁵ Applies to the Macau Special Administrative Region with effect from 24 June 2005.

The United Kingdom notified the depositary that it extended the Convention to the following territories:

Hong Kong*	12.XI.1974	6.V.1975
Bermuda	19.IX.1980	1.XII.1980
Anguilla)	
British Antarctic Territory**)	
British Virgin Islands	)	8.IX.1982
Cayman Islands)	
Falkland Islands and Dependencies**)	
Montserrat)	
Pitcairn, Henderson, Ducie and Oeno Islands)	
St. Helena and Dependencies)	
Turks and Caicos Islands	)	8.IX.1982
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus)	
Isle of Man	)	27.VI.1995

The United States notified the depositary that it extended the Convention to the following territories:

Puerto Rico, Guam, Canal Zone,)	
Virgin Islands, American Samoa,	)	9.IX.1975
Trust Territories of the Pacific Islands	)	6.V.1975

Intervention 1969

The Netherlands notified the depositary that it extended the Convention to the following territories:

Suriname***, Netherlands Antilles	19.IX.1975	18.XII.1975
Aruba (with effect from 1 January 1986)	—	—

* Ceased to apply to Hong Kong with effect from 1 July 1997.

** The depositary received the following communication dated 12 August 1986 from the Argentine delegation to the International Maritime Organization:

[Translation]

“... the Argentine Government rejects the extension made by the United Kingdom of Great Britain and Northern Ireland of the application to the Malvinas Islands, South Georgia and South Sandwich Islands of the ... International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties ... and reaffirms the rights of sovereignty of the Argentine Republic over those archipelagos which form part of its national territory.

“The General Assembly of the United Nations has adopted resolutions 2065(XX), 3160(XXVIII), 31/49, 37/9, 38/12 and 39/6 which recognize the existence of a sovereignty dispute relating to the question of the Malvinas Islands, urging the Argentine Republic and the United Kingdom to resume negotiations in order to find, as soon as possible, a peaceful and definitive solution to the dispute through the good offices of the Secretary-General of the United Nations who is requested to inform the General Assembly on the progress made. Similarly, the General Assembly of the United Nations at its fortieth session adopted resolution 40/21 of 27 November 1985 which again urges both parties to resume the said negotiations.

“... the Argentine Government also rejects the extension of its application to the so-called "British Antarctic Territory" made by the United Kingdom of Great Britain and Northern Ireland and, with respect to such extension and to any other declaration that may be made, reaffirms the rights of the Republic over the Argentine Antarctic Sector between longitude 25° and 74° west and latitude 60° south, including those rights relating to its sovereignty or corresponding maritime jurisdiction. It also recalls the safeguards concerning claims to territorial sovereignty in Antarctica provided in article IV of the Antarctic Treaty signed at Washington on 1 December 1959 to which the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland are Parties.”

The depositary received the following communication dated 3 February 1987 from the United Kingdom Foreign and Commonwealth Office:

“The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the statement made by the Argentine Republic as regards the Falkland Islands and South Georgia and the South Sandwich Islands. The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and South Georgia and the South Sandwich Islands and, accordingly, their right to extend the application of the Treaties to the Falkland Islands and South Georgia and the South Sandwich Islands.

“Equally, while noting the Argentine reference to the provisions of Article IV of the Antarctic Treaty signed at Washington on 1 December 1959, the Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the sovereignty of the United Kingdom over the British Antarctic Territory, and to the right to extend the application of the Treaties in question to that Territory.”

*** Has since become the independent State of Suriname and a Contracting State to the Convention.

**Protocol relating to
Intervention on the high seas
in cases of pollution by
substances other than oil,
1973, as amended**

(Intervention Prot. 1973)

Done at London, 2 November 1973
Entry into force: 30 March 1983

**Protocole de 1973 sur
L'intervention en haute mer
en cas de pollution par des
substances autres
que les hydrocarbures**

(Intervention Prot. 1973)

Signé à London le 2 Novembre 1973
Entrée en vigueur: 30 Mars 1983

	Date of deposit of instrument	Date of entry into force or succession
Australia (accession)¹	7.XI.1983	5.II.1984
Bahamas (accession)	5.III.1981	30.III.1983
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (ratification)	9.IX.1982	30.III.1983
Brazil (accession)	18.I.2008	17.IV.2008
Bulgaria (accession)	21.XI.2006	19.II.2007
Chile (accession)	28.II.1995	29.V.1995
China (accession)^{2,3}	23.II.1990	24.V.1990
Croatia (succession)	—	8.X.1991
Denmark (signature)	9.V.1983	7.VIII.1983
Egypt (accession)	3.II.1989	4.V.1989
Estonia (accession)	16.V.2008	14.VIII.2008
Finland (ratification)	4.VIII.1986	2.XI.1986
France (accession)¹	31.XII.1985	31.III.1986
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification)¹	21.VIII.1985	19.XI.1985
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Ireland (accession)	6.I.1995	6.IV.1995
Italy (ratification)	1.X.1982	30.III.1983
Jamaica (accession)	13.III.1991	11.VI.1991
Latvia (accession)	9.VIII.2001	7.IX.2001
Liberia (accession)	17.II.1981	30.III.1983
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	6.XI.2003	4.II.2004
Mexico (accession)	11.IV.1980	30.III.1983
Monaco (accession)	31.III.2005	29.VI.2005
Montenegro (succession)	—	3.VI.2006
Morocco (accession)	30.I.2001	30.IV.2001
Namibia (accession)	12.III.2004	10.VI.2004
Netherlands (ratification)	10.IX.1980	30.III.1983
Nicaragua (accession)	15.XI.1994	13.II.1995
Norway (accession)	15.VII.1980	30.III.1983
Oman (accession)	24.I.1985	24.IV.1985
Pakistan (accession)	13.I.1995	13.IV.1995
Poland (ratification)	10.VII.1981	30.III.1983
Portugal (accession)	8.VII.1987	6.X.1987

Intervention Prot. 1973

	Date of deposit of instrument	Date of entry into force or succession
Russian Federation (acceptance) ⁴	30.XII.1982	30.III.1983
Serbia (succession) ^{5, 6}	—	3.VI.2006
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent & the Grenadines (accession)	12.V.1999	10.VIII.1999
Slovenia (succession)	---	25.VI.1991
South Africa (accession)	25.IX.1997	24.XII.1997
Spain (accession)	14.III.1994	12.VI.1994
Sweden (ratification)	28.VI.1976	30.III.1983
Switzerland (accession)	15.XII.1987	14.III.1988
Tanzania (accession)	23.XI.2006	21.II.2007
Tonga (accession)	1.II.1996	1.V.1996
Tunisia (accession)	4.V.1976	30.III.1983
United Kingdom (ratification) ¹	5.XI.1979	30.III.1983
United States (ratification)	7.IX.1978	30.III.1983
Vanuatu (accession)	14.IX.1992	13.XII.1992
Yemen (accession)	6.III.1979	30.III.1983

Number of Contracting States: 53

¹ With a declaration or reservation.

² Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.

³ Applies to the Macao Special Administrative Region with effect from 24 June 2005.

⁴ As from 26 December 1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

⁵ As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Protocol is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.

⁶ Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e. 3 June 2006.

The United Kingdom declared ratification to be effective also in respect of:

Anguilla)	
Bermuda)	
British Antarctic Territory*)	
British Virgin Islands)	
Cayman Islands)	
Falkland Islands and Dependencies*)	
Hong Kong**)	
Montserrat	)	30.III.1983
Pitcairn, Henderson, Ducie and Oeno Islands)	
St. Helena and Dependencies)	
Turks and Caicos Islands)	
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus)	
Isle of Man	)	27.VI.1995

The Netherlands declared ratification to be effective also in respect of:

Netherlands Antilles	)	30.III.1983
Aruba (with effect from 1 January 1986))	

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1 July 1997.

**International Convention
on the
Establishment of
an International Fund
for compensation
for oil pollution damage**

(FUND 1971)

Done at Brussels, 18 December 1971
Entered into force: 16 October 1978

**Convention Internationale
portant
Création d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS 1971)

Signée à Bruxelles, le 18 décembre 1971
Entrée en vigueur: 16 octobre 1978

Cessation: 2.XII.2002

Contracting States at time of cessation of Convention

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (ratification)	2.VI.1975	16.X.1978	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (accession)	10.X.1994	8.I.1995	15.V.1998
Bahamas (accession)	22.VII.1976	16.X.1978	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)	1.XII.1994	1.III.1995	6.X.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cameroon (accession)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession)¹	24.I.1989	24.IV.1989	29.V.1999
China²	–	1.VII.1997	5.I.2000
Colombia (accession)	13.III.1997	11.VI.1997	25.I.2006
Côte d'Ivoire (accession)	5.X.1987	3.I.1988	
Croatia (succession)	–	8.X.1991	30.VII.1999
Cyprus (accession)	26.VII.1989	24.X.1989	15.V.1998
Denmark (accession)	2.IV.1975	16.X.1978	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Estonia (accession)	1.XII.1992	1.III.1993	
Fiji (accession)	4.III.1983	2.VI.1983	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998
France (accession)	11.V.1978	16.X.1978	15.V.1998
Gabon (accession)	21.I.1982	21.IV.1982	
Gambia (accession)	1.XI.1991	30.I.1992	
Germany (ratification)¹	30.XII.1976	16.X.1978	15.V.1998

*Fund 1971**Fonds 1971*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Ghana (ratification)	20.IV.1978	16.X.1978	
Greece (accession)	16.XII.1986	16.III.1987	15.V.1998
Guyana (accession)	10.XII.1997	10.III.1998	
Iceland (accession)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	10.VII.1990	8.X.1990	21.VI.2001
Indonesia (accession)	1.IX.1978	30.XI.1978	26.VI.1999
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	27.II.1979	28.V.1979	8.X.2000
Japan (ratification)	7.VII.1976	16.X.1978	15.V.1998
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Liberia (accession)	25.IX.1972	16.X.1978	15.V.1998
Malaysia (accession)	6.I.1995	6.IV.1995	
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	30.XI.1994	28.II.1995	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (accession)	23.VIII.1979	21.XI.1979	15.V.1998
Morocco (accession)	31.XII.1992	31.III.1993	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (approval)	3.VIII.1982	1.XI.1982	15.V.1998
New Zealand (accession)³	22.XI.1996	20.II.1997	25.VI.1999
Nigeria (accession)	11.IX.1987	10.XII.1987	
Norway (ratification)	21.III.1975	16.X.1978	15.V.1998
Oman (accession)	10.V.1985	8.VIII.1985	15.V.1998
Panama (accession)	18.III.1999	16.VI.1999	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Poland (ratification)	16.IX.1985	15.XII.1985	21.XII.2000
Portugal (ratification)	11.IX.1985	10.XII.1985	
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	15.V.1998
Russian Federation (accession)⁴	17.VI.1987	15.IX.1987	20.III.2001
Saint Kitts and Nevis (accession)	14.IX.1994	13.XII.1994	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Slovenia (succession)	–	25.VI.1991	19.VII.2001
Spain (accession)	8.X.1981	6.I.1982	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	16.X.1978	15.V.1998
Switzerland (ratification)	4.VII.1996	2.X.1996	15.V.1998
Syrian Arab Republic (accession)¹	6.II.1975	16.X.1978	24.IV.2009
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	16.X.1978	15.V.1998

*Fund 1971**Fonds 1971*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Tuvalu (succession)	–	16.X.1978	
United Arab Emirates (accession)	15.XII.1983	14.III.1984	24.V.2002
United Kingdom (ratification)	2.IV.1976	16.X.1978	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yugoslavia (ratification)	16.III.1978	16.X.1978	

Number of Contracting States: 24

Upon the entry into force of the 2000 Protocol to the FUND 1971 Convention, the Convention ceased when the number of Contracting States fell below 25.

¹ With a declaration, reservation or statement.

² Applies only to the Hong Kong Special Administrative Region.

³ Accession by New Zealand was declared not to extend to Tokelau.

⁴ As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Declarations, Reservations and Statements

Canada

The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):

“The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987”.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):

“that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.”

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

“...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention.”

*Fund Protocol 1976**Protocole Fonds 1976*

**Protocol to the International
Convention on the
Establishment
of an International Fund
for compensation
for oil pollution damage**

(FUND PROT 1976)

Done at London, 19 November 1976
Entered into force:
22 November 1994

**Protocole à la Convention
Internationale portant
Creation d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS PROT 1976)

Signé a Londres, le 19 novembre 1976
Entré en vigueur:
22 Novembre 1994

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	22.XI.1994	
Australia (accession)	10.X.1994	8.I.1995	
Bahamas (acceptance)	3.III.1980	22.XI.1994	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	22.XI.1994	
Belgium (accession)	1.XII.1994	1.III.1995	
Canada (accession)	21.II.1995	22.V.1995	
China³	–	1.VII.1997	22.VIII.2003
Colombia (accession)	13.III.1997	11.VI.1997	25.I.2006
Cyprus (accession)	26.VII.1989	22.XI.1994	
Denmark (accession)	3.VI.1981	22.XI.1994	
Finland (accession)	8.I.1981	22.XI.1994	
France (accession)	7.XI.1980	22.XI.1994	
Germany (ratification)¹	28.VIII.1980	22.XI.1994	
Greece (accession)	9.X.1995	7.I.1996	
Iceland (accession)	24.III.1994	22.XI.1994	
India (accession)	10.VII.1990	22.XI.1994	
Ireland (accession)	19.XI.1992	22.XI.1994	15.V.1998
Italy (accession)	21.IX.1983	22.XI.1994	
Japan (accession)	24.VIII.1994	22.XI.1994	
Liberia (accession)	17.II.1981	22.XI.1994	
Malta (accession)	27.IX.1991	22.XI.1994	6.I.2001
Marshall Islands (accession)	16.X.1995	14.I.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	22.XI.1994	
Morocco (accession)	31.XII.1992	22.XI.1994	
Netherlands (accession)	1.XI.1982	22.XI.1994	
Norway (accession)	17.VII.1978	22.XI.1994	
Poland (accession)¹	30.X.1985	22.XI.1994	
Portugal (accession)	11.IX.1985	22.XI.1994	

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Russian Federation² (accession)	30.I.1989	22.XI.1994	
Spain (accession)	5.IV.1982	22.XI.1994	
Sweden (ratification)	7.VII.1978	22.XI.1994	
United Kingdom (ratification)	31.I.1980	22.XI.1994	15.V.1998
Vanuatu (accession)	13.I.1989	22.XI.1994	
Venezuela (accession)	21.I.1992	22.XI.1994	

Number of Contracting States: 31

¹ With a declaration or statement.

² As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

³ Applies only to the Hong Kong Special Administrative Region.

States which have denounced the Protocol

	Date of receipt of denunciation	Effective date of denunciation
China (in respect of HKAR)	22.VIII/2002	22.VIII.2003
Colombia	25.I.2005	25.I.2006
Ireland	15.V.1997	15.V.1998
Malta	6.I.2000	6.I.2001
United Kingdom	9.V.1997	15.V.1998

Declarations, Reservations and Statements

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:

“... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West).”

Poland

(for text of the notification, see page 458)

*Fund Protocol 1992**Protocole Fonds 1992*

**Protocol of 1992 to amend
the International
Convention on the
Establishment of an
International
Fund for compensation
for oil pollution damage**

(FUND PROT 1992)*

Done at London,
27 November 1992
Entry into force: 30 May 1996

**Protocole de 1992 modifiant
la Convention Internationale
de 1971 portant
Creation d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS PROT 1992)

Signé a Londres,
le 27 novembre 1992
Entrée en vigueur: 30 may 1996

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30.VI.2005	30.VI.2006
Algeria (accession)	11.VI.1998	11.VI.1999
Angola (accession)	4.X.2001	4.X.2002
Antigua and Barbuda (accession)	14.VI.2000	14.VI.2001
Argentina (accession)¹	13.X.2000	13.X.2001
Australia (accession)	9.X.1995	9.X.1996
Bahamas (accession)	1.IV.1997	1.IV.1998
Bahrain (accession)	3.V.1996	3.V.1997
Barbados (accession)	7.VII.1998	7.VII.1999
Belgium (accession)	6.X.1998	6.X.1999
Belize (accession)	27.XI.1998	27.XI.1999
Benin (accession)	5.II.2010	5.II.2011
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Bulgaria (accession)	18.XI.2005	18.XI.2006
Cambodia (accession)	8.VI.2001	8.VI.2002
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession)¹	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
China (accession)²	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Cook Islands (accession)	12.III.2007	12.III.2008
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996

* The 1971 Fund Convention ceased to be in force on 24 May 2002 and therefore the Convention does not apply to incidents occurring after that date.

	Date of deposit of instrument	Date of entry into force
Djibouti (accession)	8.I.2001	8.I.2002
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Ecuador (accession)	11.XII.2007	11.XII.2008
Estonia (accession)	6.VIII.2004	6.VIII.2005
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification)¹	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Hungary (accession)	30.III.2007	30.III.2008
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	21.VI.2000	21.VI.2001
Iran (accession)	5.XI.2008	5.XI.2009
Ireland (accession)¹	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	24.VI.1997	24.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Kiribati (accession)	5.II.2007	5.II.2008
Latvia (accession)	6.IV.1998	6.IV.1999
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Luxembourg (accession)	21.XI.2005	21.XI.2006
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Maldives (accession)	20.V.2005	20.V.2006
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Monaco (ratification)	8.XI.1996	8.XI.1997
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)^{4,5}	15.XI.1996	15.XI.1997
New Zealand (accession)¹	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Panama (accession)	18.III.1999	18.III.2000

*Fund Protocol 1992**Protocole Fonds 1992*

	<u>Date of deposit of instrument</u>	<u>Date of entry into force</u>
Papua New Guinea (accession)	23.I.2001	23.I.2002
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000
Portugal (accession)	13.XI.2001	13.XI.2002
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession)¹	7.III.1997	16.V.1998
Russian Federation (accession)	20.III.2000	20.III.2001
St. Kitts and Nevis (accession)	2.III.2005	2.III.2006
St. Lucia (accession)	20.V.2004	20.V.2005
Saint Vincent and the Grenadines (accession)	1.II.2002	1.II.2003
Samoa (accession)	9.X.2001	9.X.2002
Seychelles (accession)	23.VII.1999	23.VII.2000
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	31.XII.1997	31.XII.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)¹	6.VII.1995	16.V.1998
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Switzerland (accession)	10.X.2005	10.X.2006
Syria (accession)	24.IV.2009	24.IV.2010
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)¹	17.VIII.2001	17.VIII.2002
Tuvalu (accession)	30.VI.2004	30.VI.2005
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)³	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999

Number of Contracting States 105

¹ With a declaration.

² China declared that the Protocol will be applicable only to the Hong Kong Special Administrative Region.

³ The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Jersey

The Isle of Man

Falkland Islands*

Montserrat

South Georgia and the South Sandwich Islands

Anguilla)

Bailiwick of Guernsey)

Bermuda)

British Antarctic Territory)	
British Indian Ocean Territory	)	with effect from 20.2.98
Pitcairn, Henderson, Ducie and Oeno Islands)	
Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus)	
Turks & Caicos Islands)	
Virgin Islands)	
Cayman Islands)	
Gibraltar	)	with effect from 15.5.98
St Helena and its Dependencies)	
⁴		Applies to Netherlands Antilles with effect from 21 December 2005.
⁵		Applies to Aruba with effect from 12 April 2006.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Canada

The instrument of accession of Canada was accompanied by the following declaration: "By virtue of Article 14 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, the Government of Canada assumes responsibility for the payment of the obligations contained in Article 10, paragraph 1."

Federal Republic of Germany

The instrument of ratification by Germany was accompanied by the following declaration: "The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

New Zealand

The instrument of accession of New Zealand contained the following declaration: "And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary".

Spain

The instrument of accession by Spain contained the following declaration:

[Translation]

"In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol".

*Fund Protocol 2003**Protocole Fonds 2003*

**Protocol of 2003 to the
International Convention on
the Establishment of an
International Fund for
compensation for oil
pollution damage, 1992**

(FUND PROT 2003)

Done at London, 16 may 2003
Entry into force: 3 March 2005

**Protocole de 2003 à la
Convention internationale
de 1992 portant création
d'un fonds international
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS PROT 2003)

Signée a Londres le 16 mai 2003
Entrée en vigueur: 3 Mars 2005

	Date of signature or deposit of of instrument	Date of entry into force
Australia (accession)	13.VII.2009	30.X.2009
Barbados (accession)	6.XII.2005	6.III.2006
Belgium (accession)	4.XI.2005	4.II..2006
Canada (accession)	2.X.2009	2.I.2010
Croatia (accession)	17.II.2006	17.V.2006
Denmark (signature) ¹	24.II.2004	3.III.2005
Estonia (accession)	14.X.2008	14.I.2009
Finland (accession) ²	27.V.2004	3.III.2005
France (acceptance)	29.VI.2004	3.III.2005
Germany (accession) ²	24.XI.2004	3.III.2005
Greece (accession)	23.X.2006	23.I.2007
Hungary (accession)	30.III.2007	30.VI.2007
Ireland (signature)	5.VII.2004	3.III.2005
Italy (accession)	20.X.2005	20.I.2006
Japan (accession)	13.VII.2004	3.III.2005
Korea (Republic of) (accession)	6.V.2010	6.VIII.2010
Latvia (accession)	18.IV.2006	18.VII.2006
Lithuania (accession)	22.XI.2005	22.II.2006
Morocco (accession)	4.XI.2009	4.II.2010
Netherlands (accession)	16.VI.2005	16.IX.2005
Norway (accession)	31.III.2004	3.III.2005
Poland (accession)	9.XII.2008	9.III.2009
Portugal (accession)	15.II.2005	5.V.2005
Slovenia (accession)	3.III.2006	3.VI.2006
Spain (ratification)	3.XII.2004	3.III.2005
Sweden (accession)	5.V.2005	5.VIII.2005
United Kingdom (accession) ³	8.VI.2006	8.IX.2006

Number of Contracting States: 27

¹ Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).

² With a declaration, reservation or statement.

³ Extended to the Isle of Man with effect from 15 September 2008

NUCLEAR 1971

**Convention relating to Civil
Liability in the Field of**
**Maritime Carriage
of nuclear material
(NUCLEAR 1971)**

Done at Brussels,
17 December 1971
Entered into force: 15 July 1975

**Convention relative 9 la
Responsabilité Civile dans
le Domaine du
Transport Maritime
de matières nucléaires
(NUCLEAR 1971)**

Signée a Bruxelles,
le 17 décembre 1971
Entrée en vigueur: 15 juillet 1975

	Date of deposit of instrument	Date of entry into force
Argentina (accession)	18.V.1981	16.VIII.1981
Belgium (ratification)	15.VI.1989	13.IX.1989
Bulgaria (accession)	3.XII.2004	3.III.2005
Denmark (ratification)¹	14.IX.1974	15.VII.1975
Dominica (accession)	31.VIII.2001	29.XI.2001
Finland (acceptance)	6.VI.1991	4.IX.1991
France (ratification)	2.II.1973	15.VII.1975
Gabon (accession)	21.I.1982	21.IV.1982
Germany* (ratification)	1.X.1975	30.XII.1975
Italy* (ratification)	21.VII.1980	19.X.1980
Latvia (accession)	25.I.2002	25.IV.2002
Liberia (accession)	17.II.1981	18.V.1981
Netherlands (accession)	1.VIII.1991	30.X.1991
Norway (ratification)	16.IV.1975	15.VII.1975
Spain (accession)	21.V.1974	15.VII.1975
Sweden (ratification)	22.XI.1974	15.VII.1975
Yemen (accession)	6.III.1979	4.VI.1979

Number of Contracting States: 17

Declarations, Reservations and Statements

Federal Republic of Germany

The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):

“Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator.”

⁽¹⁾ Shall not apply to the Faroe Islands.

NUCLEAR 1971

PAL 1974

This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.

The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[Translation]

“That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):

“It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident”.

Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL 1974)

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

Convention d’Athènes relative au Transport par mer de passagers et de leurs bagages (PAL 1974)

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

	Date of deposit of instrument	Date of entry into force
Albania (accession)	16.III.2005	14.VI.2005
Argentina (accession)¹	26.V.1983	28.IV.1987
Bahamas (accession)	7.VI.1983	28.IV.1987
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China (accession)^{5,6}	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Egypt (accession)	18.X.1991	16.I.1992
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (acceptance)	3.VII.1991	1.X.1991
Guyana (accession)	10.XII.1997	10.III.1998
Ireland (accession)	24.II.1998	25.V.1998
Jordan (accession)	3.X.1995	1.I.1996
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	17.II.1981	28.IV.1987

PAL 1974

	<u>Date of deposit of instrument</u>	<u>Date of entry into force</u>
Luxembourg (accession)	14.II.1991	15.V.1991
Malawi (accession)	9.III.1993	7.VI.1993
Marshall Islands (accession)	29.XI.1994	27.II.1995
Nigeria (accession)	24.II.2004	24.V.2004
Poland (ratification)	28.I.1987	28.IV.1987
Russian Federation² (accession)¹	27.IV.1983	28.IV.1987
Spain (accession)	8.X.1981	28.IV.1987
St. Kitts and Nevis (accession)	30.VIII.2005	28.XI.2005
Switzerland (ratification)	15.XII.1987	14.III.1988
Tonga (accession)	15.II.1977	28.IV.1987
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification)³	31.I.1980	28.IV.1987
Vanuatu (accession)	13.I.1989	13.IV.1989
Yemen (accession)	6.III.1979	28.IV.1987

Number of Contracting States: 32 ⁴

¹ With a declaration or reservation.

² As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

³ The United Kingdom declared ratification to be effective also in respect of:

- Bailiwick of Jersey
- Bailiwick of Guernsey
- Isle of Man
- Bermuda
- British Virgin Islands
- Cayman Islands
- Falkland Islands*
- Gibraltar
- Hong Kong**
- Montserrat
- Pitcairn
- Saint Helena and Dependencies

⁴ On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 29.VIII.1979.

⁵ Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

⁶ Applies to Macau Special Administrative Region with effect from 24 June 2005.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

PAL 1974

Declarations, Reservations and Statements

Argentina⁽¹⁾

The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):

[Translation]

“The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals”.

The instrument also contained the following reservations:

[Translation]

“The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

[Translation]

“The German Democratic Republic declares that the provisions of this Convention shall have no effect when the passenger is a national of the German Democratic Republic and when the performing carrier is a permanent resident of the German Democratic Republic or has its seat there”.

USSR

The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

⁽¹⁾ A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:

“The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated”.

**Protocol to the
Athens Convention relating
to the Carriage
of passengers
and their luggage by sea
(PAL PROT 1976)**

Done at London,
19 November 1976
Entered into force: 30 April 1989

**Protocole à la
Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages
(PAL PROT 1976)**

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 30 avril 1989

	Date of deposit of instrument	Date of entry into force
Albania (accession)	16.III.2005	14.VI.2005
Argentina (accession) ¹	28.IV.1987	30.IV.1989
Bahamas (accession)	28.IV.1987	30.IV.1989
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China ^{5,6} (accession)	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (accession)	3.VII.1991	1.X.1991
Ireland (accession)	24.II.1998	25.V.1998
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	28.IV.1987	30.IV.1989
Luxembourg (accession)	14.II.1991	15.V.1991
Marshall Islands (accession)	29.XI.1994	27.II.1995
Poland (accession)	28.IV.1987	30.IV.1989
Russian Federation ² (accession) ³	30.I.1989	30.IV.1989
Spain (accession)	28.IV.1987	30.IV.1989
Switzerland (accession) ³	15.XII.1987	30.IV.1989
Tonga (accession)	18.IX.2003	17.XII.2003
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification) ^{3,4}	28.IV.1987	30.IV.1989
Vanuatu (accession)	13.I.1989	30.IV.1989
Yemen (accession)	28.IV.1987	30.IV.1989

Number of Contracting States: 25

¹ With a reservation.

² As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

³ With a notification under article II(3).

PAL Protocol 1976

- 4 The United Kingdom declared ratification to be effective also in respect of:
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands*
Gibraltar
Hong Kong**
Montserrat
Pitcairn
Saint Helena and Dependencies
- 5 Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
- 6 Applies to Macau Special Administrative Region with effect from 24 June 2005.

* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Argentina⁽¹⁾

The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):

[Translation]

“The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

⁽¹⁾ The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

“The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands”.

*PAL Protocol 1990**Convention d'Athènes, 1974*

**Protocol of 1990 to amend the
1974 Athens Convention
relating to the Carriage
of passengers
and their luggage by sea
(PAL PROT 1990)**

Done at London, 29 March 1990
Not yet in force

**Protocole de 1990 modifiant
La Convention d'Athènes
de 1974 relative au
Transport par mer de
passagers et de leurs bagages
(PAL PROT 1990)**

Fait à Londres, le 29 mars 1990
Pas encore en vigueur

Albania (accession)

Croatia (accession)

Egypt (accession)

Luxembourg (accession)

Spain (accession)

Tonga (accession)

**Date of deposit
of instrument**

16.III.2005

12.I.1998

18.X.1991

21.XI.2005

24.II.1993

18.IX.2003

Number of Contracting States: 6

**Protocol of 2002
to the Athens Convention
relating to the carriage
of passengers
and their luggage by sea, 1974**

Done at London, 1 November 2002
Not yet in force

**Protocole de 2002
à la Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages, 1974**

Fait à Londres, le 1 Novembre 2002
Pas encore en vigueur

**Date of signature
or deposit
of instrument**

Albania (accession)

Latvia (accession)

St. Kitts and Nevis (accession)

Syrian Arab Republic (accession)

16.III.2005

17.II.2005

30.VIII.2005

10.III.2005

Number of Contracting States: 4

LLMC 1976

**Convention on
Limitation of Liability
for maritime claims**

(LLMC 1976)

Done at London, 19 November 1976
Entered into force: 1 December 1986

**Convention sur la
Limitation de la
Responsabilité en matière
de créances maritimes
(LLMC 1976)**

Signée à Londres, le 19 novembre 1976
Entrée en vigueur: 1 décembre 1986

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	1.X.2004
Algeria (accession)	4.VIII.2004	1.XII.2004
Australia (accession)	20.II.1991	1.VI.1991
Azerbaijan (accession)	16.VII.2004	1.XI.2004
Bahamas (accession)	7.VI.1983	1.XII.1986
Barbados (accession)	6.V.1994	1.IX.1994
Belgium (accession) ^{1,2}	15.VI.1989	1.X.1989
Benin (accession)	1.XI.1985	1.XII.1986
Bulgaria (accession)	4.VII.2005	1.XI.2005
China ⁹	—	1.VII.1997
Congo (accession)	7.IX.2004	3.II.2004
Cook Islands (accession)	12.III.2007	1.VII.2007
Croatia (accession)	2.III.1993	1.VI.1993
Cyprus (accession)	23.XII.2005	1.IV.2006
Denmark (ratification) (denunciation – 25.III.2004)	30.V.1984	1.XII.1986
Dominica (accession)	31.VIII.2001	1.XII.2001
Egypt (accession)	30.III.1988	1.VII.1988
Equatorial Guinea (accession)	24.IV.1996	1.VIII.1996
Estonia (accession)	23.X.2002	1.II.2003
Finland (ratification) (denunciation – 15.IX.2000)	8.V.1984	1.XII.1986
France (approval) ^{1,2}	1.VII.1981	1.XII.1986
Georgia (accession)	20.II.1996	1.VI.1996
Germany ³ (ratification) ^{1,2} (denunciation – 18.X.2000)	12.V.1987	1.IX.1987
Greece (accession)	3.VII.1991	1.XI.1991
Guyana (accession)	10.XII.1997	1.IV.1998
Hungary (accession)	4.VII.2008	1.XI.2008
India (accession)	20.VIII.2002	1.XII.2002
Ireland (accession) ¹	24.II.1998	1.VI.1998
Jamaica (accession)	17.VIII.2005	1.XII.2006
Japan (accession) ¹ (denunciation – 29.VII.2005)	4.VI.1982	1.XII.1986
Kiribati (accession)	5.II.2007	1.VI.2007
Latvia (accession)	13.VII.1999	1.XI.1999
Liberia (accession)	17.II.1981	1.XII.1986
Lithuania (accession)	3.III.2004	1.VII.2004

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	Date of deposit of instrument	Date of entry into force
Luxembourg (accession)	21.XI.2005	1.III.2006
Marshall Islands (accession)	29.XI.1994	1.III.1995
Mauritius (accession)	17.XII.2002	1.VI.2003
Mexico (accession)	13.V.1994	1.IX.1994
Netherlands (accession) ^{1,2} <i>(denunciation – 23.XII.2010)</i>	15.V.1990	1.IX.1990
New Zealand (accession) ⁵	14.II.1994	1.VI.1994
Nigeria (accession)	24.II.2004	1.VI.2004
Norway (ratification) ⁴ <i>(denunciation – 31.X.2005)</i>	30.III.1984	1.XII.1986
Poland (accession) ⁶	28.IV.1986	1.XII.1986
Romania (accession)	12.III.2007	1.VII.2007
Samoa (accession)	18.V.2004	1.IX.2004
Sierra Leone (accession)	26.VII.2001	1.XI.2001
Singapore (accession)	24.I.2005	1.V.2005
Spain (ratification) <i>(denunciation – 24.X.2006)</i>	13.XI.1981	1.XII.1986
St. Lucia (accession)	20.V.2004	1.IX.2004
Syrian Arab Republic (accession)	21.IX.2005	1.I.2006
Sweden (ratification) ⁴ <i>(denunciation – 22.VII.2004)</i>	30.III.1984	1.XII.1986
Switzerland (accession) ^{2,6}	15.XII.1987	1.IV.1988
Tonga (accession)	18.IX.2003	1.I.2004
Trinidad and Tobago (accession)	6.III.2000	1.VII.2000
Turkey (accession)	6.III.1998	1.VII.1998
Tuvalu (accession)	12.I.2009	1.IV.2009
United Arab Emirates (accession)	19.XI.1997	1.III.1998
United Kingdom (ratification) ^{1,7,8} <i>(denunciation – 17.VII.1998)</i>	31.I.1980	1.XII.1986
Vanuatu (accession)	14.IX.1992	1.I.1993
Yemen (accession)	6.III.1979	1.XII.1986

Number of Contracting States: 52

The Convention applies provisionally in respect of: Belize

¹ With a declaration, reservation or statement.

² With a notification under article 15(2).

³ On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded, 6 to the Convention on 17.II.1989.

⁴ With a notification under article 15(4).

⁵ The instrument of accession contained the following statement:
“AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau;”.

⁶ With a notification under article 8(4).

⁷ The United Kingdom declared its ratification to be effective also in respect of:
Bailiwick of Jersey
Bailiwick of Guernsey
Isle of Man

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Belize*	
Bermuda	
British Virgin Islands	
Cayman Islands	
Falkland Islands**	
Gibraltar	
Hong Kong***	
Montserrat	
Pitcairn	
Saint Helena and Dependencies	
Turks and Caicos Islands	
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus	
Anguilla)
British Antarctic Territory	) notification received
British Indian Ocean Territory	) 4.II.1999
South Georgia and the South Sandwich Islands)
⁸ With notifications under articles 8(4) and 15(2).	
⁹ Applies only to the Hong Kong Special Administrative Region.	

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- * Has since become the independent State of Belize to which the Convention applies provisionally.
- ** A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
- *** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements**Belgium**

The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):

[Translation]

“In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)”.

China

By notification dated 5 June 1997 from the People’s Republic of China:

[Translation]

“1. with respect to the Hong Kong Special Administrative Region, it reserves the right in accordance with Article 18 (1), to exclude the application of the Article 2 (1)(d)”.

France

The instrument of approval of the French Republic contained the following reservation (in the French language):

[Translation]

“In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)”.

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

[Translation]

Article 2, paragraph 1(d) and (e)

“The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk, stranded or abandoned (including anything that is or has been on board such ship). Claims, including liability, derive from the laws and regulations of the German

Democratic Republic.”

Article 8, paragraph 1

“The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund”.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[Translation]

“...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany”.

“In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention”

Japan

The instrument of accession of Japan was accompanied by the following statement (in the English language):

“...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention”.

Netherlands

The instrument of accession of the Kingdom of the Netherlands contained the following reservation:

“In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention”.

United Kingdom

The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was “Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only”.

NOTIFICATIONS

Article 8(4)

German Democratic Republic

[Translation]

“The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency”.

China

[Translation]

“The manner of calculation employed with respect to article 8(1) of the Convention concerning the unit of account shall be the method of valuation applied by the International Monetary Fund;”

Poland

“Poland will now calculate financial liabilities mentioned in the Convention in the terms of the Special Drawing Right, according to the following method.

The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar

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will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies”.

Switzerland

“The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its *Monthly Gazette*”.

United Kingdom

“...The manner of calculation employed by the United Kingdom pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund”.

Article 15(2)**Belgium**

[Translation]

“In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation”.

France

[Translation]

“...- that no limit of liability is provided for vessels navigating on French internal waterways;

- that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons”.

Federal Republic of Germany

[Translation]

“In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland waterways, is regulated by the provisions relating to the private law aspects of inland navigation.

In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons”.

Netherlands

Paragraph 2(a)

“The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.

The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.

I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:

1. for a ship not intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship's maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;
 3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;
 4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;
 5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;
 6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;
 7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident; however, in no case shall the limitation amount be less than 200,000 Units of Account.
- II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.
- III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.
- IV. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:
- (i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;
 - (ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;
 - (iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers;

Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.

The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Paragraph 2(b)

The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for

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maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or personal injury may be established by Order in Council at a lower level than under the Convention.

The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account.

The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976.”

Switzerland*[Translation]*

“In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.

Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:

II. Limitation of liability of the owner of an inland waterways vessel**Article 44a**

1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:

- a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;
- b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;
- c. in respect of any other claims, half of the amounts provided under subparagraph a.

2. The unit of account shall be the special drawing right defined by the International Monetary Fund.

3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels.”

United Kingdom

“...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims.”

Article 15(4)**Norway**

“Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893, paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4.”

Sweden

“...In accordance with paragraph 4 of article 15 of the Convention, Sweden has

established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

**Protocol of 1996 to amend
the convention on
Limitation of Liability
for maritime claims, 1976**

(LLMC PROT 1996)

Done at London, 2 May 1996
Entered into force: 13 May 2004

**Protocole de 1996 modifiant
la convention de 1976 sur la
Limitation de la
Responsabilité en matière
de créances maritimes**

(LLMC PROT 1996)

Signée à Londres le 2 mai 1996
Entrée en vigueur: 13 mai 2004

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	5.IX.2004
Antigua and Barbuda (accession)	12.X.2009	10.I.2010
Australia (accession)	8.X.2002	13.V.2004
Belgium (accession)	9.X.2009	7.I.2010
Bulgaria (accession)	4.VIII.2005	2.X.2005
Canada (ratification)	9.V.2008	7.VIII.2008
Cook Islands	12.III.2007	12.VI.2007
Croatia (accession) ¹	15.V.2006	
Cyprus (accession)	23.XII.2005	23.III.2006
Denmark (ratification)	12.IV.2002	13.V.2004
Finland (acceptance)	15.IX.2000	13.V.2004
France	24.IV.2007	23.VIII.2007
Germany (ratification)	3.IX.2001	13.V.2004
Greece (accession)	6.VII.2009	4.X.2009
Hungary (accession)	4.VII.2008	2.X.2008
Iceland (accession)	17.XI.2008	15.II.2009
Jamaica (accession)	19.VIII.2005	17.XII.2005
Japan (accession)	3.V.2006	1.VIII.2006
Latvia	18.IV.2007	17.VII.2007
Liberia (accession)	18.IX.2008	17.XII.2008
Lithuania (accession) ¹	14.IX.2007	13.XII.2007
Luxembourg (accession)	21.XI.2005	19.I.2006
Malaysia (accession) ¹	12.XI.2008	10.II.2009
Malta (accession) ¹	13.II.2004	13.V.2004
Marshall Island (accession)	30.I.2006	30.IV.2006
Netherlands (acceptance) ¹	23.XII.201	23.III.2011
Norway (ratification) ¹	17.X.2000	13.V.2004
Romania	12.III.2007	12.VI.2007
Russian Federation (accession) ¹	25.V.1999	13.V.2004
Samoa (accession)	18.V.2004	16.VIII.2004
Sierra Leone (accession)		1.XI.2001
Spain (accession) ¹	10.I.2005	10.IV.2005
St. Lucia (accession)	20.V.2004	18.VIII.2004

*Salvage 1989**Assistance 1989*

	Date of deposit of instrument	Date of entry into force
Sweden (accession)	22.VII.2004	20.X.2004
Syrian Arab Republic (accession)	2.IX.2005	1.XII.2005
Tonga (accession)	18.IX.2003	13.V.2004
Turkey (accession)¹	19.VII.2010	17.X.2010
Tuvalu (accession)	12.I.2009	12.IV.2009
United Kingdom (ratification)¹	11.VI.1999	13.V.2004

Number of Contracting States: 39

¹ With a reservation or statement

**International Convention on
Salvage, 1989
(SALVAGE 1989)**

Done at London: 28 April 1989

Entered into force: 14 July 1996

**Convention Internationale de
1989 sur l'Assistance
(ASSISTANCE 1989)**

Signée a Londres le 28 avril 1989

Entrée en vigueur: 14 juillet 1996

	Date of deposit of instrument	Date of entry into force
Albania (accession)	14.VI.2006	14.VII.2007
Australia (accession)¹	8.I.1997	8.I.1998
Azerbaijan (accession)	12.VI.2006	12.VI.2007
Belgium (accession)	30.VI.2004	30.VI.2005
Brazil (accession)	29.VII.2009	29.VII.2010
Bulgaria (accession)	14.III.2005	14.III.2006
Canada (ratification)¹	14.XI.1994	14.VII.1996
China^{4,5} (accession)¹	30.III.1994	14.VII.1996
Congo (accession)	7.IX.2004	7.IX.2005
Croatia (accession)¹	10.IX.1998	10.IX.1999
Denmark (ratification)	30.V.1995	14.VII.1996
Dominica (accession)	31.VIII.2001	31.VIII.2002
Ecuador (accession)	16.III.2005	16.III.2006
Egypt (accession)	14.III.1991	14.VII.1996
Estonia (accession)¹	31.VII.2001	31.VII.2002
Finland (approval)¹	12.I.2007	12.I.2008
France (accession)	20.XII.2001	20.XII.2002
Georgia (accession)	25.VIII.1995	25.VIII.1996
Germany (ratification)¹	8.X.2001	8.X.2002
Greece (accession)	3.VI.1996	3.VI.1997
Guinea (accession)	2.X.2002	2.X.2003
Guyana (accession)	10.XII.1997	10.XII.1998
Iceland (accession)	21.III.2002	21.III.2003
India (accession)	18.X.1995	18.X.1996
Iran (Islamic Republic of) (accession)¹	1.VIII.1994	14.VII.1996
Ireland (ratification)¹	6.I.1995	14.VII.1996
Italy (ratification)	14.VII.1995	14.VII.1996
Jordan (accession)	3.X.1995	3.X.1996
Kenya (accession)	21.VII.1999	21.VII.2000

	Date of deposit of instrument	Date of entry into force
Kiribati (accession)	5.II.2007	5.II.2008
Latvia (accession)	17.III.1999	17.III.2000
Liberia (accession)	18.IX.2008	18.IX.2009
Lithuania (accession)¹	15.XI.1999	15.XI.2000
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	17.XII.2002	17.XII.2003
Mexico (ratification)¹	10.X.1991	14.VII.1996
Netherlands (acceptance)^{1,2}	10.XII.1997	10.XII.1998
New Zealand (accession)	16.X.2002	16.X.2003
Nigeria (ratification)	11.X.1990	14.VII.1996
Norway (ratification)¹	3.XII.1996	3.XII.1997
Oman (accession)	14.X.1991	14.VII.1996
Poland (ratification)	16.XII.2005	16.XII.2006
Romania (accession)	18.V.2001	18.V.2002
Russian Federation (ratification)¹	25.V.1999	25.V.2000
Saudi Arabia (accession)¹	16.XII.1991	14.VII.1996
Sierra Leone (accession)	26.VII.2001	26.VII.2002
Slovenia (accession)	23.XII.2005	23.XII.2006
Spain (ratification)¹	27.I.2005	27.I.2006
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
Sweden (ratification)¹	19.XII.1995	19.XII.1996
Switzerland (ratification)	12.III.1993	14.VII.1996
Syrian Arab Republic (accession)¹	19.III.2002	19.III.2003
Tonga (accession)	18.IX.2003	18.IX.2004
Tunisia (accession)¹	5.V.1999	5.V.2000
United Arab Emirates (accession)	4.X.1993	14.VII.1996
United Kingdom (ratification)^{1,3}	29.IX.1994	14.VII.1996
United States (ratification)	27.III.1992	14.VII.1996
Vanuatu (accession)	18.II.1999	18.II.2000
Yemen (accession)	23.IX.2008	23.IX.2009

Number of Contracting States: 59

¹ With a reservation or statement

² With a notification

³ The United Kingdom declared its ratification to be effective in respect of:

The Bailiwick of Jersey

The Isle of Man

Falkland Islands*

Montserrat

South Georgia and the South Sandwich Islands

Hong Kong** as from 30.V.1997

Anguilla)

British Antarctic Territory)

British Indian Ocean Territory)

Cayman Islands)

Pitcairn, Henderson, Ducie and Oeno Islands) with effect from 22.7.98

St Helena and its Dependencies)

Turks and Caicos Islands)

Virgin Islands)

⁴ Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

*Salvage 1989**Assistance 1989*

⁵ Applies to Macau Special Administrative Region with effect from 24 June 2005.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Canada

The instrument of ratification of Canada was accompanied by the following reservation: "Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

China

The instrument of accession of the People's Republic of China contained the following statement:

[Translation]

"That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People's Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention".

Islamic Republic of Iran

The instrument of accession of the Islamic Republic of Iran contained the following reservation:

"The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)".

Ireland

The instrument of ratification of Ireland contained the following reservation:

"Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof".

Mexico

The instrument of ratification of Mexico contained the following reservation and declaration:

[Translation]

"The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act".

Norway

The instrument of ratification of the Kingdom of Norway contained the following reservation:

"In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

Saudi Arabia⁽¹⁾

The instrument of accession of Saudi Arabia contained the following reservations:

⁽¹⁾ The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

[Translation]

“1. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and

2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument.”

Spain

The following reservations were made at the time of signature of the Convention:

[Translation]

“In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:

- when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
- when the salvage operations take place in inland waters and no vessel is involved.

For the sole purposes of these reservations, the Kingdom of Spain understands by ‘inland waters’ not the waters envisaged and regulated under the name of ‘internal waters’ in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as ‘inland waters’:

- when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

Sweden

The instrument of ratification of the Kingdom of Sweden contained the following reservation:

“Referring to Article 30.1(d) Sweden reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

United Kingdom

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland contained the following reservation:

“In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:

- (i) the salvage operation takes place in inland waters and all vessels involved are of inland navigation; or
- (ii) the salvage operation takes place in inland waters and no vessel is involved; or .
- (iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

“The Government of the State of Israel has noted that the instrument of accession of Saudi Arabia to the above-mentioned Convention contains a declaration with respect to Israel.

In the view of the Government of the State of Israel such declaration, which is explicitly of a political character, is incompatible with the purposes and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Saudi Arabia under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Saudi Arabia an attitude of complete reciprocity.”

*Oil pollution preparedness 1990***International Convention on
Oil pollution preparedness,
response and co-operation
1990**

Done at London: 30 November 1990
Entered into force 13 May 1995.

Status as 30 June 2006

**Convention Internationale de
1990 sur la Preparation, la
lutte et la cooperation en
matière de pollution par les
hydrocarbures**

Signée a Londres le 30 novembre 1990
Entrée en vigueur: 13 Mai 1995.

	Date of deposit of instrument	Date of entry into force
Albania (accession)	2.I.2008	2.IV.2008
Algeria (accession)	8.III.2005	8.VI.2005
Angola (accession)	4.X.2001	4.I.2002
Antigua and Barbuda (accession)	5.I.1999	5.IV.1999
Argentina (ratification) ¹	13.VII.1994	13.V.1995
Australia (accession)	6.VII.1992	13.V.1995
Azerbaijan (accession)	16.VII.2004	16.X.2004
Bahamas (accession)	4.X.2001	4.I.2002
Bangladesh (accession)	23.VII.2004	23.X.2004
Benin (accession)	5.II.2010	5.V.2010
Brazil (ratification)	21.VII.1998	21.X.1998
Bulgaria (accession)	5.IV.2001	5.VII.2001
Cameroon (accession)	18.IX.2009	18.XII.2009
Canada (accession)	7.III.1994	13.V.1995
Cape Verde (accession)	4.VII.2003	4.X.2003
Chile (accession)	15.X.1997	15.I.1998
China (accession)	30.III.1998	30.VI.1998
Colombia (accession) ¹	11.VI.2008	11.IX.2008
Comoros (accession)	5.I.2000	5.IV.2000
Congo (accession)	7.IX.2004	7.XII.2004
Croatia (accession)	12.I.1998	12.IV.1998
Cuba (accession)	10.IV.2008	10.VII.2008
Denmark (ratification)	22.X.1996	22.I.1997
Djibouti (accession)	19.I.1998	19.IV.1998
Dominica (accession)	31.VIII.2001	30.XI.2001
Ecuador (ratification)	29.I.2002	29.IV.2002
Egypt (ratification)	29.VI.1992	13.V.1995
El Salvador (accession)	9.X.1995	9.I.1996
Estonia (accession)	16.V.2008	16.VIII.2008
Finland (approval)	21.VII.1993	13.V.1995
France (approval)	6.XI.1992	13.V.1995
Gabon (accession)	12.IV.2005	12.VII.2005

Oil pollution preparedness 1990

	Date of deposit of instrument	Date of entry into force
Georgia (accession)	20.II.1996	20.V.1996
Germany (ratification)	15.II.1995	15.V.1995
Ghana (accession)	02.VI.2010	02.IX.2010
Greece (ratification)	7.III.1995	7.VI.1995
Guinea (accession)	2.X.2002	2.I.2003
Guyana (accession)	10.XII.1997	10.III.1998
Iceland (ratification)	21.VI.1993	13.V.1995
India (accession)	17.XI.1997	17.II.1998
Iran (Islamic Republic of) (accession)	25.II.1998	25.V.1998
Ireland (accession)	26.IV.2001	26.VII.2001
Israel (ratification)	24.III.1999	24.VI.1999
Italy (ratification)	2.III.1999	2.VI.1999
Jamaica (accession)	8.IX.2000	8.XII.2000
Japan (accession)	17.X.1995	17.I.1996
Jordan (accession)	14.IV.2004	14.VII.2004
Kenya (accession)	21.VII.1999	21.X.1999
Latvia (accession)	30.XI.2001	28.II.2002
Lebanon (ratification)	30.III.2005	30.VI.2005
Liberia (accession)	5.X.1995	5.I.1996
Libyan Arab Jamahiriya (accession)	18.VI.2004	18.IX.2004
Lithuania (accession)	23.XII.2002	23.III.2003
Madagascar (accession)	21.V.2002	21.VIII.2002
Malaysia (accession)	30.VII.1997	30.X.1997
Malta (accession)	21.I.2003	21.IV.2003
Marshall Islands (accession)	16.X.1995	16.I.1996
Mauritania (accession)	22.XI.1999	22.II.2000
Mauritius (accession)	2.XII.1999	2.III.2000
Mexico (accession)	13.V.1994	13.V.1995
Monaco (accession)	19.X.1999	19.I.2000
Morocco (ratification)	29.IV.2003	29.VII.2003
Mozambique (accession)	9.XI.2005	10.II.2006
Namibia (accession)	08.VI.2007	18.IX.2007
Netherlands (ratification)^{2,3}	1.XII.1994	13.V.1995
New Zealand (accession)	2.VII.1999	2.X.1999
Nigeria (accession)	25.V.1993	13.V.1995
Norway (ratification)	8.III.1994	13.V.1995
Oman (accession)	26.VI.2008	26.IX.2008
Pakistan (accession)	21.VII.1993	13.V.1995
Peru (accession)	24.IV.2002	24.VII.2002
Poland (ratification)	12.VI.2003	12.IX.2003
Portugal (accession)	27.II.2006	27.V.2006

Oil pollution preparedness 1990

	Date of deposit of instrument	Date of entry into force
Qatar (accession)	8.V.2007	8.VIII.2007
Republic of Korea (accession)	9.XI.1999	9.II.2000
Romania (accession)	17.XI.2000	17.II.2001
Russian Federation (accession)	18.IX.2009	18.XII.2009
Samoa (accession)	18.V.2004	18.VIII.2004
Saudi Arabia (accession)	30.VII.2009	30.XII.2009
Senegal (ratification)	24.III.1994	13.V.1995
Seychelles (accession)	26.VI.1992	13.V.1995
Sierra Leone (accession)	10.III.2008	10.VI.2008
Singapore (accession)	10.III.1999	10.VI.1999
Slovenia (accession)	31.V.2001	31.VIII.2001
South Africa (accession)	4.VII.2008	4.X.2008
St. Kitts and Nevis (accession)	7.X.2004	7.I.2004
St. Lucia (accession)	20.V.2004	20.VIII.2004
Spain (ratification)	12.I.1994	13.V.1995
Sweden (ratification)	30.III.1992	13.V.1995
Switzerland (accession)	4.VII.1996	4.X.1996
Syrian Arab Republic (accession)	14.III.2003	14.VI.2003
Thailand (accession)	20.IV.2000	20.VII.2000
Tonga (accession)	1.II.1996	1.V.1996
Trinidad and Tobago (accession)	6.III.2000	6.VI.2000
Tunisia (accession)	23.X.1995	23.I.1996
Turkey (accession)	1.VII.2004	1.X.2004
United Kingdom (accession)	16.IX.1997	16.XII.1997
United Republic of Tanzania (accession)	16.V.2006	16.VIII.2006
United States (ratification)	27.III.1992	13.V.1995
Uruguay (signature by confirmation)	27.IX.1994	13.V.1995
Vanuatu (accession)	18.II.1999	18.V.1999
Venezuela (ratification)	12.XII.1994	13.V.1995

Number of Contracting States: 102

¹ With a reservation.

² Applies to Aruba with effect from 13 October 2006.

³ Applies to the Netherlands Antilles with effect from 18 October 2007.

**Protocol on preparedness,
response and co-operation
to pollution incidents by
hazardous and noxious
substances, 2000**
(OPRC-HNS 2000)

Done at London, 15 March 2000
Entered into force: 14 June 2007

**Protocole sur la préparation,
la lutte et la coopération en
matière d'incidents de
pollution par des substances
nocives et potentiellement
dangereuses, 2000**

(OPRC-HNS Protocole)

Fait à Londres, le 15 Mars 2000
Entrée en vigueur: 14 Juin 2000

	Date of deposit of instrument	Date of entry into force
Australia (accession)	16.III.2005	14.VI.2007
Chile (accession)	16.X.2006	14.VI.2007
China (accession) *	19.XI.2009	19.II.2010
Colombia (accession)	11.VI.2008	11.IX.2008
Denmark (ratification)	30.IX.2008	30.XII.2008
Ecuador (accession)	29.I.2002	14.VI.2007
Egypt (accession)	26.V.2004	14.VI.2007
Estonia (ratification)	16.V.2008	16.VIII.2008
France (accession)	24.IV.2007	24.VII.2007
Germany (ratification)	2.VI.2009	2.IX.2009
Greece (ratification)	28.V.2003	14.VI.2007
Japan (accession)	9.III.2007	14.VI.2007
Liberia (accession)	18.IX.2008	18.XII.2008
Malta (accession)	21.I.2003	14.VI.2007
Netherlands (accession)	22.X.2002	14.VI.2007
Poland (accession)	12.VI.2003	14.VI.2007
Portugal (accession)	14.VI.2006	14.VI.2007
Korea, Republic of (accession)	11.I.2008	11.IV.2008
Singapore (accession)	16.X.2003	14.VI.2007
Slovenia (accession)	5.IV.2006	14.VI.2007
Spain (accession)	27.I.2005	14.VI.2007
Sweden (accession)	23.XII.2002	14.VI.2007
Syria (accession)	10.II.2005	14.VI.2007
Uruguay (accession)	31.VII.2003	14.VI.2007
Vanuatu (accession)	15.III.2004	14.VI.2007

Number of Contracting States: 25

* Extended to Macao Special Administrative Region

¹ With a reservation or statement.

HNS 1996

**International Convention on
Liability and Compensation
for damage in connection
with the carriage of hazardous
and noxious substances by
sea, 1996
(HNS 1996)**

Done at London, 3 May 1996
Not yet in force.

**Convention Internationale de 1996
sur la responsabilité
et l'indemnisation pour les
dommages liés au transport
par mer de substances nocives
et potentiellement dangereuses
(HNS 1996)**

Signée a Londres le 3 mai 1996
Pas encore en vigueur.

	Date of signature or deposit of instrument
Angola (accession)	4.X.2001
Cyprus (accession)	10.I.2005
Ethiopia (accession)	14.VII.2009
Hungary (accession)	4.VII.2008
Liberia (accession)	18.IX.2008
Lythuania (accession) ¹	14.IX.2007
Morocco (accession)	19.III.2003
Russian Federation (accession) ¹	20.III.2000
Samoa (accession)	18.V.2004
Sierra Leone (accession)	21.XI.2007
St. Kitts and Nevis (accession)	7.X.2004
Slovenia (accession)	21.VII.2004
Syrian Arab Republic (accession)	27.VI.2008
Tonga (accession)	18.IX.2003

Number of Contracting States: 14.

¹ With a reservation or statement.

**International Convention on
Civil Liability for
Bunker Oil Pollution
Damage, 2001
(BUNKER 2001)**

Done at London, 23 March 2001
Entered into force: 21 November 2008

**Convention Internationale
sur la responsabilité civile
pour les dommages dus
à la pollution par les
hydrocarbures de soute
(BUNKER 2001)**

Signée a Londres le 23 Mars 2001
Entrée en vigueur: 21 Novembre 2008

	Date of signature or deposit of instrument
Albania (accession)	30.IV.2010
Antigua and Barbuda (accession)	19.XIII.2008

BUNKER 2001

Australia (ratification)	16.III.2009
Azerbaijan (accession)	22.VI.2010
Bahamas (accession)	30.I.2008
Barbados (accession)	15.X.2009
Belgium (accession)	11.VIII.2009
Bulgaria (accession)	6.VII.2007
Canada (accession)	2.X.2009
China (accession)¹	9.XII.2008
Cook Islands (accession)	21.VIII.2008
Croatia (accession)	15.XII.2006
Cyprus (accession)	10.I.2005
Denmark (ratification)¹	23.VII.2008
Egypt (accession)	15.II.2010
Estonia (accession)	5.X.2006
Ethiopia (accession)	17.II.2009
France (accession)¹	19.X.2010
Finland (accession)¹	18.II.2009
Germany (ratification)	24.IV.2007
Greece (accession)	22.XII.2005
Hungary (accession)	30.I.2008
Ireland (accession)¹	23.XII.2008
Italy (ratification)	18.XI.2010
Jamaica (accession)	2.V.2003
Jordan (accession)	24.III.2010
Kiribati (accession)	29.VII.2009
Korea (Democratic People's Republic of) (accession)	17.VII.2009
Korea (Republic of) (accession)	28.VIII.2009
Latvia (accession)	19.IV.2005
Liberia (accession)	21.VIII.2008
Lithuania (accession)	14.IX.2007
Luxembourg (accession)¹	21.XI.2005
Malaysia (accession)	12.II.2009
Malta (accession)¹	12.II.2009
Marshall Islands (accession)	09.V.2008
Morocco (accession)	14.IV.2010
Netherlands (accession)	23.XII.2010
Nigeria (accession)	1.X.2010
Norway (ratification)	25.III.2008
Panama (accession)	17.II.2009
Poland (accession)	15.XII.2006
Romania (accession)	15.VI.2009
Russian Federation (accession)	24.II.2009
Saint Kitts and Nevis (accession)	21.X.2009
Saint Vincent and the Grenadines (accession)	26.XI.2008
Samoa (accession)	18.V.2004
Serbia (accession)	8.VII.2010
Sierra Leone (accession)	21.XI.2007
Singapore (accession)	31.III.2006
Slovenia (accession)	20.V.2004
Spain (ratification)¹	10.XII.2003
Syria (accession)	24.IV.2009
Tonga (accession)	18.IX.2003

SUA 1988

Tuvalu (accession)	12.I.2009
United Kingdom (ratification) ¹	29.VI.2006
Vanuatu (accession)	20.VIII.2008
Vietnam (accession)	18.VI.2010

Number of Contracting States: 58 representing approximately 88.06% of the world's merchant shipping.

¹ With a reservation or declaration.

**Convention for the
suppression of unlawful acts
against the safety of
maritime navigation, 1988
(SUA 1988)**

Done at Rome, 10 March 1988
Entry into force: 1 March 1992.

**Convention pour la
répression d'actes illicites
contre la sécurité de la
navigation maritime, 1988
(SUA 1988)**

Signée a Rome le 10 Mars 1988
Entrée en vigueur: 1 Mars 1992.

	Date of deposit of instrument	Date of entry into force
Afghanistan (accession)	23.IX.2003	22.XII.2003
Albania (accession)	19.VI.2002	17.IX.2002
Algeria (accession) ¹	11.II.1998	12.V.1998
Andorra, Principality of (accession) ¹	17.VII.2006	15.X.2006
Antigua and Barbuda (accession)	12.X.2009	10.I.2010
Argentina (ratification)	17.VIII.1993	15.XI.1993
Armenia (accession) ¹	8.VI.2005	6.IX.2005
Australia (accession)	19.II.1993	20.V.1993
Austria (ratification)	28.XII.1989	1.III.1992
Azerbaijan (accession) ¹	26.I.2004	25.IV.2004
Bahamas (accession)	25.X.2005	23.I.2006
Bahrain (accession)	21.X.2005	19.I.2006
Bangladesh (accession)	9.VI.2005	7.IX.2005
Barbados (accession)	6.V.1994	4.VIII.1994
Belarus (accession)	4.XII.2002	4.III.2003
Belgium (accession)	11.IV.2005	10.VII.2005
Benin (accession)	31.VIII.2006	29.XI.2006
Bolivia (accession)	13.II.2002	14.V.2002
Bosnia and Herzegovina (accession)	28.VII.2003	26.X.2003
Botswana (accession)	14.IX.2000	13.XII.2000
Brazil (ratification) ¹	25.X.2005	23.I.2006
Brunei Darussalam (ratification)	4.XII.2003	3.III.2004
Bulgaria (ratification)	8.VII.1999	6.X.1999
Burkina Faso (accession)	15.I.2004	14.IV.2004
Cambodia (accession)	18.VIII.2006	16.XI.2006
Canada (ratification) ²	18.VI.1993	16.IX.1993
Cape Verde (accession)	3.I.2003	3.IV.2003

SUA 1988

	Date of deposit of instrument	Date of entry into force
Chile (ratification)	22.IV.1994	21.VII.1994
China (ratification) ^{1,7}	20.VIII.1991	1.III.1992
Comoros (accession)	6.III.2008	4.VI.2008
Cook Islands (accession)	12.III.2007	10.VI.2007
Costa Rica (ratification)	25.III.2003	23.VI.2003
Croatia (accession)	18.VIII.2005	16.XI.2005
Cuba (accession) ²	20.XI.2001	18.II.2002
Cyprus (accession)	2.II.2000	2.V.2000
Czech Republic (accession)	10.XII.2004	10.III.2005
Denmark (ratification) ¹	25.VIII.1995	23.XI.1995
Djibouti (accession)	9.VI.2004	7.IX.2004
Dominica (accession)	31.VIII.2001	29.XI.2001
Dominican Republic (accession)	3.VII.2008	1.X.2008
Ecuador (accession)	10.III.2003	8.VI.2003
Egypt (ratification) ¹	8.I.1993	8.IV.1993
El Salvador (accession)	7.XII.2000	7.III.2001
Equatorial Guinea (accession)	15.I.2004	14.IV.2004
Estonia (accession)	15.II.2002	16.V.2002
Finland (ratification)	12.XI.1998	10.II.1999
Fiji (accession)	21.V.2008	19.VIII.2008
France (approval) ¹	2.XII.1991	1.III.1992
Gambia (accession)	1.XI.1991	1.III.1992
Georgia (accession)	11.VIII.2006	9.XI.2006
Germany ³ (accession)	6.XI.1990	1.III.1992
Ghana (accession)	1.XI.2002	30.I.2003
Greece (ratification)	11.VI.1993	9.IX.1993
Grenada (accession)	9.I.2002	9.IV.2002
Guatemala (accession)	26.VIII.2009	24.XI.2009
Guinea (accession)	1.II.2005	2.V.2005
Guinea Bissau (accession)	14.X.2008	12.I.2009
Guyana (accession)	30.I.2003	30.IV.2003
Honduras (accession)	17.V.2005	15.VIII.2005
Hungary (ratification)	9.XI.1989	1.III.1992
Iceland (accession)	28.V.2002	26.VIII.2002
India (accession) ¹	15.X.1999	13.I.2000
Iran (Islamic Republic of)(accession) ¹	30.X.2009	28.I.2010
Ireland (accession)	10.IX.2004	9.XII.2004
Israel (ratification) ¹	6.I.2009	6.IV.2009
Italy (ratification)	26.I.1990	1.III.1992
Jamaica (accession) ²	17.VIII.2005	15.XI.2005
Japan (accession)	24.IV.1998	23.VII.1998
Jordan (accession)	2.VII.2004	30.IX.2004
Kazakhstan (accession)	24.XI.2003	22.II.2004
Kenya (accession)	21.I.2002	21.IV.2002
Kiribati (accession)	17.XI.2005	16.II.2006
Kuwait (accession)	30.VI.2003	28.IX.2003
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Liberia (ratification)	5.X.1995	3.I.1996

SUA 1988

	Date of deposit of instrument	Date of entry into force
Libyan Arab Jamahiriya (accession)	8.VIII.2002	6.XI.2002
Liechtenstein (accession)	8.XI.2002	6.II.2003
Lithuania (accession)	30.I.2003	30.IV.2003
Luxembourg (accession)	5.I.2011	5.IV.2011
Macedonia (former Yugoslav Republic of)	7.VIII.2007	2.X.2007
Madagascar (accession)	15.IX.2006	14.XII.2006
Mali (accession)	29.IV.2002	28.VII.2002
Malta (accession)	20.XI.2001	18.II.2002
Marshall Islands (accession)	29.XI.1994	27.II.1995
Mauritania	17.I.2008	16.IV.2008
Mauritius (accession)	3.VIII.2004	1.XI.2004
Mexico (accession)¹	13.V.1994	11.VIII.1994
Micronesia (accession)	10.II.2003	11.V.2003
Moldova (accession)¹	11.X.2005	9.I.2006
Monaco (accession)	25.I.2002	25.IV.2002
Mongolia (accession)	22.XI.2005	20.II.2006
Morocco (ratification)	8.I.2002	8.IV.2002
Mozambique (accession)¹	8.I.2003	8.IV.2003
Myanmar (accession)¹	19.IX.2003	18.XII.2003
Namibia (accession)	10.VII.2004	18.X.2004
Nauru (accession)	11.VIII.2005	9.XI.2005
Netherlands (acceptance)⁵	5.III.1992	3.VI.1992
New Zealand (ratification)	10.VI.1999	8.IX.1999
Nicaragua (accession)	4.VII.2007	2.X.2007
Niger (accession)	30.VIII.2006	28.XI.2006
Nigeria (ratification)	24.II.2004	24.V.2004
Niue (accession)	22.VI.2009	20.IX.2009
Norway (ratification)	18.IV.1991	1.III.1992
Oman (accession)	24.IX.1990	1.III.1992
Pakistan (accession)	20.IX.2000	19.IX.2000
Palau (accession)	4.XII.2001	4.III.2002
Panama (accession)	3.VII.2002	1.X.2002
Paraguay (accession)²	12.XI.2004	10.II.2005
Peru (accession)	19.VII.2001	17.X.2001
Philippines (ratification)	6.I.2004	5.IV.2004
Poland (ratification)	25.VI.1991	1.III.1992
Portugal (accession)¹	5.I.1996	4.IV.1996
Qatar (accession)¹	18.IX.2003	17.XII.2003
Republic of Korea (accession)	14.V.2003	12.VIII.2003
Romania (accession)	2.VI.1993	31.VIII.1993
Russian Federation (ratification)	4.V.2001	2.VIII.2001
St. Kitts and Nevis (accession)	17.I.2002	17.IV.2002
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent and the Grenadines (accession)	9.X.2001	7.I.2002
Samoa (accession)	18.V.2004	16.VIII.2004
Sao Tome and Principe	5.V.2006	3.VIII.2006
Saudi Arabia (accession)⁶	2.II.2006	3.V.2006
Senegal (accession)	9.VIII.2004	7.XI.2004

SUA 1988

	Date of deposit of instrument	Date of entry into force
Serbia (accession) ⁸	–	3.VI.2006
Seychelles (ratification)	24.I.1989	1.III.1992
Singapore (accession)	3.II.2004	3.V.2004
Slovakia (accession)	8.XII.2000	8.III.2001
Slovenia (accession)	18.VII.2003	16.X.2003
South Africa (accession)	8.VII.2005	6.X.2005
Spain (ratification)	7.VII.1989	1.III.1992
Sri Lanka (accession)	4.IX.2000	3.XII.2000
Sudan (accession)	22.V.2000	20.VIII.2000
Swaziland (accession)	17.IV.2003	16.VII.2003
Sweden (ratification)	13.IX.1990	1.III.1992
Switzerland (ratification)	12.III.1993	10.VI.1993
Syrian Arab Republic (accession)	24.III.2003	22.VI.2003
Tajikistan (accession)	12.VIII.2005	10.XI.2005
Togo (accession)	10.III.2003	8.VI.2003
Tonga (accession)	6.XII.2002	6.III.2003
Trinidad and Tobago (accession)	27.VII.1989	1.III.1992
Tunisia (accession) ¹	6.III.1998	4.VI.1998
Turkey (ratification) ¹	6.III.1998	4.VI.1998
Turkmenistan (accession)	8.VI.1999	6.IX.1999
Tuvalu (accession)	2.XII.2005	2.III.2006
Uganda (accession)	11.XI.2003	9.II.2004
Ukraine (ratification)	21.IV.1994	20.VII.1994
United Arab Emirates (accession) ¹	15.IX.2005	14.XII.2005
United Kingdom (ratification) ^{1,4}	3.V.1991	1.III.1992
United Republic of Tanzania (accession)	11.V.2005	9.VIII.2005
United States (ratification)	6.XII.1994	6.III.1995
Uruguay (accession)	10.VIII.2001	8.XI.2001
Uzbekistan (accession)	25.IX.2000	24.XII.2000
Vanuatu (accession)	18.II.1999	19.V.1999
Viet Nam (accession)	12.VII.2002	10.X.2002
Yemen (accession)	30.VI.2000	28.IX.2000

Contracting States: 157, representing approximately 94.73% of the gross tonnage of the world's merchant shipping

¹ With a reservation, declaration or statement.

² With a notification under article 6.

³ On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded* to the Convention on 14 April 1989.

* With a reservation.

⁴ The United Kingdom declared its ratification to be effective also in respect of the Isle of Man (notification received 8 February 1999).

⁵ Extended to Aruba from 15 December 2004 the date the notification was received.

⁶ With a reservation under articles 11 and 16, paragraph 1

⁷ China declared that the Convention would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.

⁸ Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 2006.

SUA Protocol 1988

**Protocol for the
suppression of unlawful acts
against the safety of fixed
platforms located on the
continental shelf, 1988**

(SUA PROTOCOL 1988)

Done at Rome, 10 March 1988
Entry into force: 1 March 1992.

**Protocole pour la
répression d'actes illicites
contre la sécurité des
plates-formes fixes situées sur
le plateau continental, 1988**

(SUA PROTOCOL 1988)

Signée a Rome le 10 Mars 1988
Entrée en vigueur: 1 Mars 1992.

	Date of deposit of instrument	Date of entry into force
Afghanistan (accession)	23.IX.2003	22.XII.2003
Albania (accession)	19.VI.2002	17.IX.2002
Andorra, Principality of (accession)	17.VII.2006	15.X.2006
Antigua and Barbuda (accession)	12.X.2009	10.I.2010
Argentina (ratification)	26.XI.2003	24.II.2004
Armenia (accession)	8.VI.2005	6.IX.2005
Australia (accession)	19.II.1993	20.V.1993
Austria (accession)	28.XII.1989	1.III.1992
Azerbaijan (accession)	26.I.2004	25.IV.2004
Bahamas (accession)	25.X.2005	23.I.2006
Bahrain (accession)	21.X.2005	19.I.2006
Bangladesh (accession)	9.VI.2005	7.IX.2005
Barbados (accession)	6.V.1994	4.VIII.1994
Belarus (accession)	4.XII.2002	4.III.2003
Belgium (accession)	11.IV.2005	10.VII.2005
Benin (accession)	31.VIII.2006	29.XI.2006
Bolivia (accession)	13.II.2002	14.V.2002
Bosnia and Herzegovina (accession)	28.VII.2003	26.X.2003
Botswana (accession)	14.IX.2000	13.XII.2000
Brazil (ratification)¹	25.X.2005	23.I.2006
Brunei Darussalam (ratification)	4.XII.2003	3.III.2004
Bulgaria (ratification)	8.VII.1999	6.X.1999
Burkina Faso (accession)	14.I.2004	13.IV.2004
Canada (ratification)¹	18.VI.1993	16.IX.1993
Cambodia (accession)	18.VIII.2006	16.XI.2006
Cape Verde (accession)	3.I.2003	3.IV.2003
Chile (ratification)	22.IV.1994	21.VII.1994
China (ratification)^{2, 6}	20.VIII.1991	1.III.1992
Comoros (accession)	6.III.2008	4.VI.2008
Cook Islands (accession)	12.III.2007	10.VI.2007
Costa Rica (ratification)	25.III.2003	23.VI.2003
Croatia (accession)	18.VIII.2005	16.XI.2005
Cuba (accession)²	20.XI.2001	18.II.2002
Cyprus (accession)	2.II.2000	2.V.2000
Czech Republic (accession)	10.XII.2004	10.III.2005

SUA Protocol 1988

	Date of deposit of instrument	Date of entry into force
Denmark (ratification) ²	25.VIII.1995	23.XI.1995
Djibouti (accession)	9.VI.2004	7.IX.2004
Dominica (accession)	12.X.2004	10.I.2005
Dominican Republic (accession)	12.VIII.2009	10.XI.2009
Ecuador (accession)	10.III.2003	8.VI.2003
Egypt (ratification) ²	8.I.1993	8.IV.1993
El Salvador (accession)	7.XII.2000	7.III.2001
Equatorial Guinea (accession)	15.I.2004	14.IV.2004
Estonia (accession)	28.I.2004	27.IV.2004
Fiji (accession)	21.V.2008	19.VIII.2008
Finland (accession)	28.IV.2000	27.VII.2000
France (approval) ²	2.XII.1991	1.III.1992
Georgia (accession)	11.VIII.2006	9.XI.2006
Germany (accession) ³	6.XI.1990	1.III.1992
Ghana (accession)	1.XI.2002	30.I.2003
Greece (ratification)	11.VI.1993	9.IX.1993
Grenada (accession)	9.I.2002	9.IV.2002
Guatemala (accession)	26.VIII.2009	24.XI.2009
Guinea (accession)	1.II.2005	2.V.2005
Guinea Bissau (accession)	14.X.2008	12.I.2009
Guyana (accession)	30.I.2003	30.IV.2003
Honduras (accession)	17.V.2005	15.VIII.2005
Hungary (ratification)	9.XI.1989	1.III.1992
Iceland (accession)	28.V.2002	26.VIII.2002
India (accession) ²	15.X.1999	13.I.2000
Iran (Islamic Republic of) (accession) ¹	30.X.2009	28.I.2010
Ireland (accession)	10.IX.2004	9.XII.2004
Israel (ratification) ¹	6.I.2009	6.IV.2009
Italy (ratification)	26.I.1990	1.III.1992
Jamaica (accession) ¹	19.VIII.2005	17.XI.2005
Japan (accession)	24.IV.1998	23.VII.1998
Jordan (accession)	2.VII.2004	30.IX.2004
Kazakhstan (accession)	24.XI.2003	22.II.2004
Kenya (accession)	21.I.2002	21.IV.2002
Kiribati (accession)	17.XI.2005	16.II.2006
Kuwait (accession)	30.VI.2003	28.IX.2003
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Liberia (ratification)	5.X.1995	3.I.1996
Libyan Arab Jamahiriya (accession)	8.VIII.2002	6.XI.2002
Liechtenstein (accession)	8.XI.2002	6.II.2003
Lithuania (accession)	30.I.2003	30.IV.2003
Macedonia (former Yugoslav Republic of)	7.VIII.2007	5.XI.2007
Madagascar (accession)	15.IX.2006	14.XII.2006
Mali (accession)	29.IV.2002	28.VII.2002
Malta (accession)	20.XI.2001	18.II.2002

SUA Protocol 1988

	Date of deposit of instrument	Date of entry into force
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania	17.I.2008	16.IV.2008
Mauritius (accession)	3.VIII.2004	1.XI.2004
Mexico (accession)¹	13.V.1994	11.VIII.1994
Moldova (accession)²	11.X.2005	9.I.2006
Monaco (accession)	25.I.2002	25.IV.2002
Mongolia (accession)	22.XI.2005	20.II.2006
Montenegro (succession)⁷	---	3.VI.2006
Morocco (ratification)	8.I.2002	8.IV.2002
Mozambique (accession)	8.I.2003	8.IV.2003
Myanmar (accession)	19.IX.2003	18.XII.2003
Namibia (accession)	7.IX.2005	6.XII.2005
Nauru (accession)	11.VIII.2005	9.XI.2005
Netherlands (acceptance)^{2, 5}	5.III.1992	3.VI.1992
New Zealand (ratification)	10.VI.1999	8.IX.1999
Nicaragua (accession)	4.VII.2007	2.X.2007
Niger (accession)	30.VIII.2006	28.XI.2006
Niue (accession)	22.VI.2009	20.IX.2009
Norway (ratification)	18.IV.1991	1.III.1992
Oman (accession)	24.IX.1990	1.III.1992
Pakistan (accession)	20.IX.2000	10.XII.2000
Palau (accession)	4.XII.2001	4.III.2002
Panama (accession)	3.VII.2002	1.X.2002
Paraguay (accession)¹	12.XI.2004	10.II.2005
Peru (accession)	19.VII.2001	17.X.2001
Philippines (ratification)	6.I.2004	5.IV.2004
Poland (ratification)	25.VI.1991	1.III.1992
Portugal (accession)	5.I.1996	4.IV.1996
Qatar (accession)	18.IX.2003	17.XII.2003
Republic of Korea (accession)	10.VI.2003	8.IX.2003
Romania (accession)	2.VI.1993	31.VIII.1993
Russian Federation (ratification)	4.V.2001	2.VIII.2001
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent and the Grenadines (accession)	9.X.2001	7.I.2002
Sao Tome and Principe	5.V.2006	3.VIII.2006
Saudi Arabia (accession)	2.II.2006	3.V.2006
Senegal (accession)	9.VIII.2004	7.XI.2004
Serbia (succession)⁷	---	3.VI.2006
Seychelles (ratification)	24.I.1989	1.III.1992
Slovakia (accession)	8.XII.2000	8.III.2001
Slovenia (accession)	18.VII.2003	16.X.2003
South Africa (accession)	8.VII.2005	6.X.2005
Spain (ratification)	7.VII.1989	1.III.1992
Sudan (accession)	22.V.2000	20.VIII.2000
Swaziland (accession)	17.IV.2003	16.VII.2003
Sweden (ratification)	13.IX.1990	1.III.1992

SUA Protocol 1988

	Date of deposit of instrument	Date of entry into force
Switzerland (ratification)	12.III.1993	10.VI.1993
Syrian Arab Republic (accession)	24.III.2003	22.VI.2003
Tajikistan (accession)	12.VIII.2005	10.XI.2005
Togo (accession)	10.III.2003	8.VI.2003
Tonga (accession)	6.XII.2002	6.III.2003
Trinidad and Tobago (accession)	27.VII.1989	1.III.1992
Tunisia (accession)	6.III.1998	4.VI.1998
Turkey (ratification)²	6.III.1998	4.VI.1998
Turkmenistan (accession)	8.VI.1999	6.IX.1999
Tuvalu (accession)	2.XII.2005	2.III.2006
Ukraine (ratification)	21.IV.1994	20.VII.1994
United Arab Emirates (accession)²	15.IX.2005	14.XII.2005
United Kingdom (ratification)^{2, 4}	3.V.1991	1.III.1992
United States (ratification)	6.XII.1994	6.III.1995
Uruguay (accession)	10.VIII.2001	8.XI.2001
Uzbekistan (accession)	25.IX.2000	24.XII.2000
Vanuatu (accession)	18.II.1999	19.V.1999
Viet Nam (accession)	12.VII.2002	10.X.2002
Yemen (accession)	30.VI.2000	28.IX.2000

Number of Contracting States: 145, representing approximately 89.56% of the gross tonnage of the world's merchant shipping.

¹ With a notification under article 3.

² With a reservation, declaration or statement.

³ On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded* to the Convention on 14 April 1989.

* With a reservation.

⁴ The United Kingdom declared its ratification to be effective also in respect of the Isle of Man. (notification received 8 February 1999).

⁵ Applies to Aruba with effect from 17 January 2006.

⁶ China declared that the Protocol would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.

⁷ Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e. 3 June 2006.

SUA 2005

**Protocol of 2005 to the
Convention for the
suppression of unlawful acts
against the safety of
maritime navigation**

(SUA 2005)

Done at London, 14 October 2005
Entry into force: 28 July 2010

**Protocole de 2005 à la
Convention pour la
répression d'actes illicites
contre la sécurité de la
navigation maritime**

(SUA 2005)

Signée a Londres le 10 Octobre 1988
Entrée en vigueur: 28 Juillet 2010

	Date of signature of deposit of instrument
Algeria (accession)	25.I.2011
Austria (ratification)	18.VI.2010
Bulgaria (ratification)	7.X.2010
Cook Islands (accession)	12.III.2007
Dominican Republic (accession)	9.III.2010
Estonia (ratification)	16.V.2008
Fiji (accession)	21.V.2008
Latvia (accession)	16.XI.2009
Liechtenstein (accession)	28.VIII.2009
Marshall Islands (accession)	9.V.2008
Nauru (accession)	29.IV.2010
Panama (accession)	24.II.2011
Saint Kitts and Nevis (accession)	29.III.2007
Saint Vincent and Grenadines (accession)	5.VII.2010
Serbia (accession)	8.VII.2010
Spain (ratification)	16.IV.2008
Switzerland (accession)	15.X.2008
Turkey (ratification)	19.VII.2010
Vanuatu (accession)	20.VIII.2008

Number of Contracting States: 19

**STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNITED NATIONS
AND UNITED NATIONS/IMO CONVENTIONS
IN THE FIELD OF
PUBLIC AND PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS DES NATIONS UNIES ET
AUX CONVENTIONS DES NATIONS UNIES/OMI
EN MATIERE DE
DROIT MARITIME PUBLIC
ET DE DROIT MARITIME PRIVE**

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

Notes de l'editeur / Editor's notes:

- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.

**United Nations Convention on a
Code of Conduct
for liner conferences**

Geneva, 6 April 1974
Entered into force: 6 October 1983

**Convention des Nations Unies sur
un
Code de Conduite
des conférences maritimes**

Genève, 6 avril 1974
Entrée en vigueur: 6 octobre 1983

Algeria	(r)	12.XII.1986
Bangladesh	(a)	24.VII.1975
Barbados	(a)	29.X.1980
Belgium	(r)	30.IX.1987
Benin	(a)	27.X.1975
Bulgaria	(a)	12.VII.1979
Burkina Faso	(a)	30.III.1989
Cameroon	(a)	15.VI.1976
Cape Verde	(a)	13.I.1978
Central African Republic	(a)	13.V.1977
Chile	(S)	25.VI.1975
China ¹	(a)	23.IX.1980
Congo	(a)	26.VII.1982
Costa Rica	(r)	27.X.1978
Croatia	(r)	8.X.1991
Cuba	(a)	23.VII.1976
Czech Republic	(AA)	4.VI.1979
Denmark (except Greenland and the Faroe Islands)	(a)	28.VI.1985
Egypt	(a)	25.I.1979
Ethiopia	(r)	1.IX.1978
Finland	(a)	31.XII.1985
France	(AA)	4.X.1985
Gabon	(r)	5.VI.1978
Gambia	(S)	30.VI.1975
Germany	(r)	6.IV.1983
Ghana	(r)	24.VI.1975
Guatemala	(r)	3.III.1976
Guinea	(a)	19.VIII.1980
Guyana	(a)	7.I.1980
Honduras	(a)	12.VI.1979
India	(r)	14.II.1978
Indonesia	(r)	11.I.1977
Iraq	(a)	25.X.1978

¹ Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

*Code of conduct 1974**Code de conduite 1974*

Italy	(a)	30.V.1989
Ivory Coast	(r)	17.II.1977
Jamaica	(a)	20.VII.1982
Jordan	(a)	17.III.1980
Kenya	(a)	27.II.1978
Korea, Republic of	(a)	II.V.1979
Kuwait	(a)	31.III.1986
Lebanon	(a)	30.IV.1982
Madagascar	(a)	23.XII.1977
Malaysia	(a)	27.VIII.1982
Mali	(a)	15.III.1978
Mauritania	(a)	21.III.1988
Mauritius	(a)	16.IX.1980
Mexico	(a)	6.V.1976
Morocco	(a)	11.II.1980
Mozambique	(a)	21.IX.1990
Netherlands (for the Kingdom in Europe only)	(a)	6.IV.1983
Niger	(r)	13.I.1976
Nigeria	(a)	10.IX.1975
Norway	(a)	28.VI.1985
Pakistan	(S)	27.VI.1975
Peru	(a)	21.XI.1978
Philippines	(r)	2.III.1976
Portugal	(a)	13.VI.1990
Qatar	(a)	31.X.1994
Romania	(a)	7.I.1982
Russian Federation	(A)	28.VI.1979
Saudi Arabia	(a)	24.V.1985
Serbia and Montenegro	(d)	12.III.2001
Senegal	(r)	20.V.1977
Sierra Leone	(a)	9.VII.1979
Slovakia	(AA)	4.VI.1979
Somalia	(a)	14.XI.1988
Spain	(a)	3.II.1994
Sri Lanka	(S)	30.VI.1975
Sudan	(a)	16.III.1978
Sweden	(a)	28.VI.1985
Togo	(r)	12.I.1978
Trinidad and Tobago	(a)	3.III.1983
Tunisia	(a)	15.III.1979
United Kingdom	(a)	28.VI.1985
United Republic of Tanzania	(a)	3.XI.1975
Uruguay	(a)	9.VII.1979
Venezuela	(S)	30.VI.1975
Zambia	(a)	8.IV.1988

**United Nations Convention
on the
Carriage of goods by sea**

**Hamburg, 31 March 1978
“HAMBURG RULES”**

Entered into force:
1 November 1992

Albania
Austria
Barbados
Botswana
Burkina Faso
Burundi
Cameroon
Chile
Czech Republic¹
Dominican Republic
Egypt
Gambia
Georgia
Guinea
Hungary
Jordan
Kenya
Lebanon
Lesotho
Liberia
Malawi
Morocco
Nigeria
Paraguay
Romania
Saint Vincent and the Grenadines
Senegal
Sierra Leone
Syrian Arab Republic
Tanzania, United Republic of
Tunisia
Uganda
Zambia

**Convention des Nations Unies
sur le
Transport de marchandises
par mer**

**Hambourg 31 mars 1978
“REGLES DE HAMBOURG”**

Entrée en vigueur:
1 novembre 1992

(a) 20.VII.2006
(r) 29.VII.1993
(a) 2.II.1981
(a) 16.II.1988
(a) 14.VIII.1989
(a) 4.IX.1998
(a) 21.IX.1993
(r) 9.VII.1982
(r) 23.VI.1995
(a) 28.IX.2007
(r) 23.IV.1979
(r) 7.II.1996
(a) 21.III.1996
(r) 23.I.1991
(r) 5.VII.1984
(a) 10.V.2001
(a) 31.VII.1989
(a) 4.IV.1983
(a) 26.X.1989
(a) 16.IX.2005
(r) 18.III.1991
(a) 12.VI.1981
(a) 7.XI.1988
(a) 19.VII.2005
(a) 7.I.1982
(a) 12.IX.2000
(r) 17.III.1986
(r) 7.X.1988
(a) 16.X.2002
(a) 24.VII.1979
(a) 15.IX.1980
(a) 6.VII.1979
(a) 7.X.1991

¹ The Convention was signed on 6 march 1979 by the former Czechoslovakia. Respectively on 28 May 1993 and on 2 Jun 1993 the Slovak Republic and the Czech Republic deposited instruments of succession. The Czech Republic then deposited instrument of ratification on 23 Jun 1995.

*Multimodal transport 1980**UNCLOS 1982*

**United Nations Convention
on the
International multimodal
transport of goods**

Geneva, 24 May 1980
Not yet in force.

Burundi
Chile
Georgia
Lebanon
Liberia
Malawi
Mexico
Morocco
Rwanda
Senegal
Zambia

**Convention des Nations Unies
sur le
Transport multimodal
international de
marchandises**

Genève 24 mai 1980
Pas encore en vigueur.

(a) 4.IX.1998
(r) 7.IV.1982
(a) 21.III.1996
(a) 1.VI.2001
(a) 16.IX.2005
(a) 2.II.1984
(r) 11.II.1982
(r) 21.I.1993
(a) 15.IX.1987
(r) 25.X.1984
(a) 7.X.1991

**United Nations Convention
on the Law of the Sea
(UNCLOS 1982)**

Montego Bay 10 December 1982
Entered into force:
16 November 1994

Albania
Algeria
Angola
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria

**Convention des Nations Unies
sur les Droit de la Mer**

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

23.VI.2003
11.VI.1996
5.XII.1990
2.II.1989
1.XII.1995
9.XII.2002
5.X.1994
14.VII.1995
29.VII.1983
30.V.1985
27.VII.2001
12.X.1993
13.XI.1998
13.VIII.1983
16.X.1997
28.IV.1995
12.I.1994
2.V.1990
22.XII.1988
5.XI.1996
15.V.1996

UNCLOS 1982

Burkina Faso	25.I.2005
Cameroon	19.XI.1985
Canada	7.XI.2003
Cape Verde	10.VIII.1987
Chile	25.VIII.1997
China	7.VI.1996
Comoros	21.VI.1994
Congo, Democratic Republic of	17.II.1989
Cook Islands	15.II.1995
Costa Rica	21.IX.1992
Côte d'Ivoire	28.VII.1995
Croatia	5.IV.1995
Cuba	15.VIII.1984
Cyprus	12.XII.1988
Czech Republic	21.VI.1996
Denmark	16.XI.2004
Djibouti	8.X.1991
Dominica	24.X.1991
Egypt	26.VIII.1983
Equatorial Guinea	21.VII.1997
Estonia	26.VIII.2005
European Community	1.IV.1998
Fiji	10.XII.1982
Finland	21.VI.1996
France	11.IV.1996
Gabon	11.III.1988
Gambia	22.V.1984
Georgia	21.III.1996
Germany	14.X.1994
Ghana	7.VI.1983
Greece	21.VII.1995
Grenada	25.IV.1991
Guatemala	11.II.1997
Guinea	6.IX.1985
Guinea-Bissau	25.VIII.1986
Guyana	16.XI.1993
Haiti	31.VII.1996
Honduras	5.X.1993
Hungary	5.II.2002
Iceland	21.VI.1985
India	29.VI.1995
Indonesia	3.II.1986
Iraq	30.VII.1985
Ireland	21.VI.1996
Italy	13.I.1995
Jamaica	21.III.1983
Japan	20.VI.1996
Jordan	27.XI.1995
Kenya	2.III.1989
Kiribati	24.II.2003
Korea, Republic of	29.I.1996

UNCLOS 1982

Kuwait	2.V.1986
Lao People's Democratic Republic	5.VI.1998
Latvia	23.XII.2004
Lebanon	5.I.1995
Lituania	12.XI.2003
Luxembourg	5.X.2000
Madagascar	22.VIII.2002
Malaysia	14.X.1996
Maldives	7.IX.2000
Mali	16.VII.1985
Malta	20.V.1993
Marshall Islands	9.VIII.1991
Mauritania	17.VII.1996
Mauritius	4.XI.1994
Mexico	18.III.1983
Micronesia, Federated States of	29.IV.1991
Monaco	20.III.1996
Mongolia	13.VIII.1996
Mozambique	13.III.1997
Myanmar	21.V.1996
Namibia, United Nations Council for	18.IV.1983
Nauru	23.I.1996
Nepal	2.XI.1998
Netherlands	28.VI.1996
New Zeland	19.VII.1996
Nicaragua	3.V.2000
Nigeria	14.VIII.1986
Norway	24.VI.1996
Oman	17.VIII.1989
Pakistan	26.II.1997
Palau	30.IX.1996
Panama	1.VII.1996
Papua New Guinea	14.I.1997
Paraguay	26.IX.1986
Philippines	8.V.1984
Poland	13.XI.1998
Portugal	3.XI.1997
Qatar	7.XII.2002
Romania	17.XII.1996
Russian Federation	12.III.1997
Samoa	14.VIII.1995
St. Kitts and Nevis	7.I.1993
St. Lucia	27. III.1985
St. Vincent and the Grenadines	1.X.1993
Sao Tomé and Principe	3.XI.1987
Saudi Arabia	24.IV.1996
Senegal	25.X.1984
Serbia and Montenegro	12.III.2001
Seychelles	16.IX.1991
Sierra Leone	12.XII.1994
Singapore	17.XI.1994

Slovakia	8.V.1996
Slovenia	16.VI.1995
Solomon Islands	23.VI.1997
Somalia	24.VII.1989
South Africa	23.XII.1997
Spain	15.I.1997
Sri Lanka	19.VII.1994
Sudan	23.I.1985
Suriname	9.VII.1998
Sweden	25.VI.1996
Tanzania, United Republic of	30.IX.1985
The Former Yugoslav Republic of Macedonia	19.VIII.1994
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Tuvalu	8.XII.2002
Uganda	9.XI.1990
Ukraine	26.VII.1999
United Kingdom	25.VII.1997
Uruguay	10.XII.1992
Vanautu	10.VIII.1999
Viet Nam	25.VII.1994
Yemen, Democratic Republic of	21.VII.1987
Zambia	7.III.1983
Zimbabwe	24.II.1993

**United Nations Convention
on Conditions for
Registration of ships**

Geneva, 7 February 1986
Not yet in force.

Albania
Bulgaria
Egypt
Georgia
Ghana
Haiti
Hungary
Iraq
Ivory Coast
Liberia
Libyan Arab Jamahiriya
Mexico
Oman
Syrian Arab Republic

**Convention des Nations
Unies sur les Conditions d'
Immatriculation des navires**

Genève, 7 février 1986
Pas encore entrée en vigueur.

(a)	4.XII.2004
(a)	27.XII.1996
(r)	9.I.1992
(a)	7.VIII.1995
(a)	29.VIII.1990
(a)	17.V.1989
(a)	23.I.1989
(a)	1.II.1989
(r)	28.X.1987
(a)	16.IX.2005
(r)	28.II.1989
(r)	21.I.1988
(a)	18.X.1990
(a)	29.IX.2004

*Liability of operators 1991**Maritime liens and mortgages, 1993***United Nations Convention on the Liability of operators of transport terminals in the international trade**

Done at Vienna 19 April 1991
Not yet in force.

Gabon
Georgia
Egypt
Paraguay

Convention des Nations Unies sur la Responsabilité des exploitants de terminaux transport dans le commerce international

Signée à Vienne 19 avril 1991
Pas encore entrée en vigueur.

(a) 15.XII.2004
(a) 21.III.1996
(a) 6.IV.1999
(a) 19.VII.2005

International Convention on Maritime liens and mortgages, 1993

Done at Geneva, 6 May 1993
Entered into force:
5 September 2004

Ecuador
Estonia
Monaco
Nigeria
Peru
Russian Federation
Saint Vincent and the Grenadines
Spain
Syrian Arab Republic
Tunisia
Ukraine
Vanuatu

Convention Internationale de 1993 su les Privilèges et hypothèques maritimes

Signée à Genève, le 6 mai 1993
Entrée en vigueur:
5 septembre 2004

(a) 16.III.2004
(a) 7.II.2003
(a) 28.III.1995
(a) 5.III.2004
(a) 23.III.2007
(a) 4.III.1999
(a) 11.III.1997
(a) 7.VI.2002
(a) 8.X.2003
(r) 2.II.1995
(a) 27.II.2003
(a) 10.VIII.1999

**International Convention on
Arrest of Ships, 1999**

Will enter into force on
14 September 2011

**Convention Internationale de
1999 sur la saisie
conservatoire des navires**

Entrera en vigueur
le 14 Septembre 2011

Albania	(a)	14.III.2011
Algeria	(a)	7.V.2004
Benin	(a)	3.III.2010
Bulgaria	(r)	21.II.2001
Ecuador	(r)	15.X.2010
Estonia	(a)	11.V.2001
Latvia	(a)	7.XII.2001
Liberia	(a)	16.IX.2005
Spain ¹	(a)	7.VI.2002
Syrian Arab Republic ²	(a)	16.X.2002

¹ At the time of its accession, the Kingdom of Spain, in accordance with article 10, paragraph 1 (b), reserves the right to exclude the application of this Convention in the case of ships not flying the flag of a State party.

² The accession of the Syrian Arab Republic to this Convention shall not in any way be construed to mean recognition of Israel and shall not lead to entry with it into any of the transactions regulated by the provisions of the Convention.

STATUS OF THE RATIFICATIONS OF UNESCO CONVENTIONS

UNESCO Convention on the Protection of the Underwater Cultural Heritage

Done at Paris 2 November 2001*

	Date of deposit of instrument
Barbados (acceptance)	2.X.2008
Bulgaria (ratification)	06.X.2003
Cambodia (ratification)	24.XI.2007
Croatia (ratification)	01.XII.2004
Cuba (ratification)	26.V.2008
Ecuador (ratification)	01.XII.2006
Grenada (ratification)	15.I.2009
Lebanon (acceptance)	08.I.2007
Libyan Arab Jamahiriya (ratification)	23.VI.2005
Lithuania (ratification)	12.VI.2006
Mexico (ratification)	05.VIII.2006
Montenegro (ratification)	18.VII.2008
Nigeria (ratification)	21.X.2005
Panama (ratification)	20.V.2003
Paraguay (ratification)	07.IX.2006
Portugal (ratification)	21.IX.2006
Romania (acceptance)	31.VII.2007
Saint Lucia (ratification)	01.II.2007
Slovenia (ratification)	18.IX.2008
Spain (ratification)	06.VI.2005
Tunisia (ratification)	15.I.2009
Ukraine (ratification)	27.XII.2006

* In accordance with its Article 27, this Convention shall enter into force on 2 January 2009 for those States that have deposited their respective instruments of ratification, acceptance, approval or accession on or before 2 October 2008. It shall enter into force for any other State three months after the deposit by that State of its instrument of ratification, acceptance, approval or accession.

**STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNIDROIT CONVENTIONS
IN THE FIELD OF PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS D'UNIDROIT EN MATIERE
DE DROIT MARITIME PRIVE**

**Unidroit Convention on
International financial
leasing 1988**

Done at Ottawa 28 May 1988
Entered into force.
1 May 1995

**Convention de Unidroit sur
le Creditbail international
1988**

Signée à Ottawa 28 mai 1988
Entré en vigueur:
1 Mai 1995

Belarus	(a)	18.VIII.1998
France	(r)	23.IX.1991
Hungary	(a)	7.V.1996
Italy	(r)	29.XI.1993
Latvia	(a)	6.VIII.1997
Nigeria	(r)	25.X.1994
Panama	(r)	26.III.1997
Russian Federation	(a)	3.VI.1998
Uzbekistan, Republic of	(a)	6.VII.2000

CONFERENCES OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS - 1897

President: Mr. Auguste BEERNAERT.

Subjects:

Organization of the International Maritime Committee - Collision - Shipowners' Liability.

II. ANTWERP - 1898

President: Mr. Auguste BEERNAERT.

Subjects:

Liability of Owners of sea-going vessels.

III. LONDON - 1899

President: Sir Walter PHILLIMORE.

Subjects:

Collisions in which both ships are to blame - Shipowners' liability.

IV. PARIS - 1900

President: Mr. LYON-CAEN.

Subjects:

Assistance, salvage and duty to tender assistance - Jurisdiction in collision matters.

V. HAMBURG - 1902

President: Dr. Friedrich SIEVEKING.

Subjects:

International Code on Collision and Salvage at Sea - Jurisdiction in collision matters - Conflict of laws as to owner-ship of vessels.

VI. AMSTERDAM - 1904

President: Mr. E.N. RAHUSEN.

Subjects:

Conflicts of law in the matter of Mortgages and Liens on ships. - Jurisdiction in collision matters - Limitation of Shipowners' Liability.

VII. LIVERPOOL - 1905

President: Sir William R. KENNEDY.

Subjects:

Limitation of Shipowners' Liability - Conflict of Laws as to Maritime Mortgages and Liens - Brussels Diplomatic Conference.

VIII. VENICE - 1907

President: Mr. Alberto MARGHIERI.

Subjects:

Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Conflict of law as to Freight.

IX. BREMEN - 1909

President: Dr. Friedrich SIEVEKING.

Subjects:

Conflict of laws as to Freight - Compensation in respect of personal injuries - Publication of Maritime Mortgages and Liens.

X. PARIS - 1911

President: Mr. Paul GOVARE.

Subjects:

Limitation of Shipowners' Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913

President: Dr. J.H. KOCH.

Subjects:

London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

XII. ANTWERP - 1921

President: Mr. Louis FRANCK.

Subjects:

International Conventions relating to Collision and Salvage at sea. - Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Code of Affreightment - Exonerating clauses.

XIII LONDON - 1922

President: Sir Henry DUKE.

Subjects:

Immunity of State-owned ships - Maritime Mortgage and Liens. - Exonerating clauses in Bills of lading.

XIV. GOTHENBURG - 1923

President: Mr. Efiel LÖFGREN.

Subjects:

Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

XV. GENOA - 1925

President: Dr. Francesco BERLINGIERI.

Subjects:

Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

Conferences of the Comité Maritime International

XVI. AMSTERDAM - 1927

President: Mr. B.C.J. LODER.

Subjects:

Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

XVII. ANTWERP - 1930

President: Mr. Louis FRANCK.

Subjects:

Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933

President: Mr. Edvin ALTEN.

Subjects:

Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS - 1937

President: Mr. Georges RIPERT.

Subjects:

Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947

President: Mr. Albert LILAR.

Subjects:

Ratification of the Brussels Conventions, more especially of the Convention on Immunity of State-owned ships - Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea - York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM - 1948

President: Prof. J. OFFERHAUS

Subjects:

Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) - Combined Through Bills of Lading - Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951

President: Mr. Amedeo GIANNINI.

Subjects:

Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID - 1955

President: Mr. Albert LILAR.

Subjects:

Limitation of Shipowners' Liability - Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959

President: Mr. Albert LILAR

Subjects:

Liability of operators of nuclear ships - Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS - 1962

President: Mr. Albert LILAR

Subjects:

Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963

President: Mr. Albert LILAR

Subjects:

Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965

President: Mr. Albert LILAR

Subjects:

Revision of the Convention on Maritime Liens and Mortgages.

Conferences of the Comité Maritime International

XXVIII. TOKYO - 1969

President: Mr. Albert LILAR

Subjects:

“Torrey Canyon” - Combined Transports - Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972

President: Mr. Albert LILAR

Subjects:

Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974

President: Mr. Albert LILAR

Subjects:

Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

XXXI. RIO DE JANEIRO - 1977

President: Prof. Francesco BERLINGIERI

Subjects:

Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII MONTREAL - 1981

President: Prof. Francesco BERLINGIERI

Subjects:

Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985

President: Prof. Francesco BERLINGIERI

Subjects:

Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS - 1990

President: Prof. Francesco BERLINGIERI

Subjects:

Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY - 1994

President: Prof. Allan PHILIP

Subjects:

Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - *Special Sessions:* Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP – 1997

CENTENARY CONFERENCE

President: Prof. Allan PHILIP

Subjects:

Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI - Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships - Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXVII. SINGAPORE – 2001

President: Patrick GRIGGS

Subjects:

Issues of Transport Law - Issues of Marine Insurance - General Average - Implementation of Conventions - Piracy - Passengers Carried by Sea.

XXXVIII. VANCOUVER – 2004

President: Patrick GRIGGS

Subjects:

Transport Law - General Average - Places of Refuge for Ships in Distress - Pollution of the Marine Environment - Maritime Security - Marine Insurance - Bareboat Chartered Vessels - Implementation of the Salvage Convention.

XXXIX – ATHENS 2008

President: Jean-Serge Rohart

Subjects:

Places of Refuge – Procedural Rules Relating to Limitation of Liability in Maritime Law – UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – Non-technical Measures to Promote Quality Shipping – Implementation and Interpretation of International Conventions – Judicial Sale of Ships – Charterer’s Right to Limit Liability – Charterer’s Right to Limit Liability – Wreck Removal Convention 2007 – Draft Convention on Recycling of Ships

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